144-126

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 197.

CLINTON C. TRIPP, PLAINTIFF IN ERROR,

vs.

THE SANTA ROSA STREET RAILROAD COMPANY ET AL.

IN ERROR TO THE SUPREME OF THE STATE OF CALIFORNIA.

FILED OCTOBER 9, 1888.

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a No. 8498.

In the Supreme Court of the State of California.

CLINTON C. TRIPP, Appellant,
vs.
SANTA ROSA STREET RAILROAD *et al.*, Respondents.

Transcript on Appeal.

P. G. Galpin, counsel for appellant; Clinton C. Tripp, *in pro. pro.* J. T. Campbell, James H. McGee *et al.*, attorneys for respondents. McKinstry, J. Filed Jun- 13,-1882.

1 In the Superior Court in and for the County of Sonoma, California.

CLINTON C. TRIPP, Plaintiff,
vs.
SANTA ROSA STREET R. R. *et al.*, Defendants.

Bill of Exceptions.

Be it remembered that on the thirteenth day of February, 1882, the motion of the plaintiff herein to set aside the orders ordered herein on the fifteenth day of December, 1881, and to vacate the judgment on that day rendered, came on to be heard before the Hon. T. J. Bowers, sitting in said court, and on the hearing thereof E. J. Linforth appeared for plaintiff. Messrs. Johnson, Allen, McGee, Rutledge, and Ware appeared for defendants, and when said motion was called said Linforth read the affidavits, of which the following are copies:

(Title of Court and Cause.)

2 Edward J. Linforth, being first duly sworn, deposes and says that on the fourteenth day of December, 1881, he was present at the calling of the above-entitled cause and represented the plaintiff in said action; that on the calling of said cause he presented to said court an affidavit of Clinton C. Tripp, Esq., and also stated to said court that said plaintiff and P. G. Galpin, his counsel, were actually engaged in the preparation of the case of Ellis *vs.* C. P. R. R. Co. in the U. S. circuit court, and asked said court to grant a continuance of said cause upon the facts therein stated. The continuance asked for by plaintiff was argued by some of the attorneys for some of the defendants, and the court denied the right of said plaintiff for a continuance upon the facts alleged in said affidavit.

That immediately thereafter, and before any of the defendants in said cause had proceeded with trial in the above-entitled action, this affiant, representing said Tripp, filed with the clerk of said court a petition of Clinton C. Tripp and a bond for the removal of said cause

from said court to the U. S. circuit court, which was opposed by said defendants, and after argument *pro* and *con.* the honorable court took said matter as to said bond and petition under advisement until the fifteenth day of December, 1881, at 10 o'clock a. m. of that day.

EDWARD J. LINFORTH.

Sworn and subscribed to before me this 27th day of December, 1881.

WILLIAM HARNEY,
[SEAL.] *Notary Public.*

Read on the hearing of the within motion, Feb. 13th, 1882.

3 (Title Court and Cause.)

Clinton C. Tripp, being duly sworn, deposes and says that he is the plaintiff in the above-entitled cause; that he received no notice for trial or time set for trial on the part of the defendants, except as to the defendants J. P. Clark and Adam Shane, represented by McGee, Campbell and Shannon, attorneys for said defendants; and as to the defendants Henry Wise, B. Goldfish, Wm. Wilson, Wm. Ducker, L. Schawn, Wm. Kennedy, Catharine Grove, Saville McBreen, Louis Wilder, H. Label, Silas Whitman, Alex. M. Hatfield, and John Brown, represented by John Brown, attorney for said defendants.

That as to the other defendants, who had answered up to the thirteenth of December, 1881, no notice of trial or of their being ready for trial was ever given to this deponent or his counsel, P. G. Galpin.

That he is informed and believes that this deponent's bond and petition for removal of this cause were duly filed on December 14th, 1881, before the trial of this cause or any ordered for trial had been made in their said cause.

That this deponent is informed and believes that the sessions of said court in which the calendars for trial are prepared by the clerk are the first Mondays of January, April, July, and October, and that the above-entitled cause was never placed on the calendar of said sessions.

CLINTON C. TRIPP.

4 Sworn and subscribed to before me this 27th day of December, 1881.

WILLIAM HARNEY,
[SEAL.] *Notary Public.*

Read on the hearing of the motion, Feb. 13th, 1882.

(Title Court and Cause.)

STATE OF CALIFORNIA, }
County of Sonoma, } ss:

Darwin C. Allen, being first duly sworn, deposes, and says: I am one of the attorneys for one hundred and four of the defendants in whose cases orders of dismissals were entered herein on the fifteenth day of December, 1881; that as such attorney I did, on or

about the first day of December, 1881, in writing, notify the plaintiff, Clinton C. Tripp, that the said one hundred and four cases were set for trial in said court on the thirteenth day of December, 1881; that afterwards, on the first Monday in December, 1881, the plaintiff admitted to the affiant that he received said notice. The affiant further saith that said notice was mailed by the affiant, sealed and postage prepaid, to the address of plaintiff and directed to him.

DARWIN C. ALLEN.

Subscribed and sworn to before me this 31st day of December, 1881.

R. A. THOMPSON, *County Clerk*,
By JAMES ANDERSON, *Deputy*.

5 Endorsed: Filed Dec. 31, 1881. R. A. Thompson, clerk, by James Anderson, deputy.

Read on the within motion.

(Title Court and Cause.)

Clinton C. Tripp, being first duly sworn, deposes, and says that the following is a true and correct copy of a letter I received from R. A. Frame and Darwin C. Allen, dated Santa Rosa, Cal., November 30th, 1881, and the only notice or letter received from them as regards to the trial of the above-entitled cause, to wit:

"SANTA ROSA, CAL., *Nov. 30th*, 1881.

Clinton C. Tripp, San Francisco, Cal.:

The cases we represent in your suit against the Santa Rosa Street R. R. *et al.*, which are at issue, are set for trial before Judge Bowers in this court on Dec. 13th, 1881. Bowers will sit for Temple. Of these we will take up the cases of Wm. Hill, D. C. Bain, and the Santa Rosa Street R. R. Co., and will be prepared in the others if you are.

R. A. FRAME.
DARWIN C. ALLEN."

CLINTON C. TRIPP.

Sworn and subscribed to before me this 11th day of January, 1882.

WILLIAM HARNEY,
[SEAL.] *Notary Public.*

Read on the hearing of the within motion, Feb. 13, 1882.

6 And also the notice of motion and proof of service thereof, of which the following are copies:

In the Superior Court in and for Sonoma County, California.

CLINTON C. TRIPP, Plaintiff,
vs.
SANTA ROSA STREET R. R. *et al.*, Defendants.

Please take notice that the plaintiff, C. C. Tripp, will, on all the papers on file and proceedings had herein, and on the affidavit of Edward J. Linforth, hereto attached, and the affidavits of C. C. Tripp and E. J. Linforth, heretofore filed herein on December 27th, 1881; also the petition and bond for removal of this cause into the United States circuit court for the district of California, heretofore filed in this cause on December 14th, 1881, move this honorable court, at the court-room thereof of department No. 2 of the superior court of the county of Sonoma, on the 13th day of February, A. D. 1882, at the hour of 10 o'clock a. m. of that day, or as soon thereafter as counsel can be heard, for an order setting aside and vacating the orders herein made and entered on the fifteenth day of December, 1881, denying said plaintiff's petition for a removal of said cause from the superior court of Sonoma county to the circuit court of the United States held at the city and county of San Francisco, State aforesaid, and also the order therein made and entered on said
7 last-mentioned day dismissing said action as to certain defendants named in said order, upon the ground that the court had no jurisdiction of said action to make the said orders heretofore recited, and on the further ground of surprise and excusable neglect.

CLINTON C. TRIPP, *In Pro. Pro.*
P. G. GALPIN, *Of Counsel.*

To Frame & Allen, A. B. Ware, John Brown, George A. Johnson, Rutledge & McConnell, Henley & Hardin, Shannon, Campbell & McGee, Whipple & Oats, Murray Whallon.

Endorsed: Filed Jan. 26, 1882. R. S. Thompson, clerk, by James A. Anderson, deputy.

Read on the hearing of the motion Feb. 13, 1882.

Title of Court & Cause.

CITY AND COUNTY OF SAN FRANCISCO, } ss:
State of California,

Edward J. Linforth, being first duly sworn, deposes and says that on the 14th day of December, 1881, he was present at the calling of the above-entitled cause and represented the plaintiff in said action; that on the calling of said cause he pre-
8 sented to said court an affidavit of Clinton C. Tripp, Esq., and also stated to said court that said plaintiff and P. G. Galpin, his counsel, were actually engaged in the preparation of the case of Ellis *vs.* C. P. R. R. Co. in the U. S. circuit court, and asked said court to grant a continuance of said cause upon the facts therein stated. The continuance asked for by plaintiff was argued by some

of the attorneys for some of the defendants, and the court denied the right of said plaintiff for a continuance upon the fact alleged in said affidavit; that immediately thereafter and before any of the defendants in said cause had proceeded with trial in the above-entitled action this affiant, representing said Tripp, read the petition and bond of plaintiff, Clinton C. Tripp, for the removal of said cause from the superior court of Sonoma county to the circuit court of the United States, district of California, and had the same duly filed with the clerk of said superior court. Said motion for removal was opposed by said defendants, and after argument *pro* and *con* the hon. court took said matter as to said bond and petition under advisement until the 15th day of December, 1881, at 10 o'clock a. m. of that day.

EDWARD J. LINFORTH.

Sworn and subscribed to before me this 25th day of January, 1882.

[SEAL.] WILLIAM HARNEY,
Notary Public.

Read on the hearing of the within motion February 13th, 1882.

9 Endorsed: This notice was filed January 26th, 1882. R. A. Thompson, clerk; James Anderson, deputy.

(Title Court and Cause.)

CITY AND COUNTY OF SAN FRANCISCO, }
State of California, } *ss.:*

W. E. B. Bartholow, being duly sworn, deposes and says that he is over the age of eighteen years; that he served the annexed notice of motion on Frame & Allen, A. B. Ware, John Brown, Geo. A. Johnson, Rutledge & McConnell, Henley & Hardin, Shannon, Campbell & McGee, Whipple & Oates, and Murray Whallon, attorneys for certain defendants in this cause therein mentioned, by depositing in the post office a copy of said notice, postage paid, addressed to said attorneys at their respective places, to wit, Frame & Allen, Santa Rosa, Cal.; A. B. Ware, Santa Rosa, Cal.; John Brown, Santa Rosa, Cal.; Geo. A. Johnson, Santa Rosa, Cal.; Rutledge & McConnell, Santa Rosa, Cal.; Henley & Hardin, Santa Rosa, Cal.; Shannon, Campbell & McGee, Santa Rosa, Cal.; Whipple & Oates, Santa Rosa, Cal., and Murray Whallon, Santa Rosa, Cal., all of the county of Sonoma, on the 25th day of January, A. D. 1882.

W. E. B. BARTHOLOW.

Sworn and subscribed to before me this 25th day of January, 1882.

WILLIAM HARNEY,
[SEAL.] *Notary Public.*

10 Read on the hearing of the within motion February 13th, 1882.

Also read the petition and bond for removal of this cause to the U. S. circuit court, of which the following are copies:

(Title Court and Cause.)

To the superior court of the county of Sonoma:

The petition of Clinton C. Tripp, the plaintiff in the above-entitled action, respectfully shows—

Your petitioner, the said plaintiff, is and at the time of the commencement of this action was a citizen of the State of Illinois and now is a citizen of the same State. The defendants are and at the time of commencement of this action were citizens of the State of California.

This action is of a civil nature. An action of ejectment was commenced in the month of February, 1881, to recover from the defendants the possession of a tract of land in the county of Sonoma, which is described in the complaint.

That said action has never been tried or otherwise disposed of.

That part of the defendants have demurred to the complaint, which demurrer has not yet been disposed of, and no issue of fact has yet been joined in the action as to them.

That part of the defendants have answered to the complaint.

That the matter in dispute in said action, exclusive of costs, exceed- the sum and value of five hundred (500) dollars.

11 Your petitioner presents to this court and files herewith a bond, with good and sufficient sureties, conditioned as required by law in such case made and provided, and prays that this court accept and file said bond and petition, and that this action be removed into the circuit court of the United States for the district of California, to be there proceeded with, tried, and determined.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

Clinton C. Tripp, being sworn, says that he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

CLINTON C. TRIPP.

Sworn and subscribed to before me this 13th day of December, 1881.

WILLIAM HARNEY.
[SEAL.] *Notary Public.*

Read on the hearing of the within motion February 13th, 1882.

Endorsed: Petition for removal, &c. Filed December 14th, 1881. R. A. Thompson, clerk, by James Anderson, deputy clerk.

12 (Title Court and Cause.)

Know all men by these presents that I, Clinton C. Tripp, plaintiff in the above-entitled action and a citizen of the State of Illinois, principal, and F. S. Spring and J. Solomon, of the city and county of San Francisco, sureties, are held and firmly bound into the said Santa Rosa Street Railroad and the other defendants and all other

persons whom it may concern in the penal sum of five hundred (500) dollars; to which payment we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Given under our hands and seals at San Francisco this 13th day of December, 1881.

The condition of this above obligation is such that whereas the plaintiff in the above-entitled action has brought said action in the superior court above named against the defendants therein; and whereas the plaintiff, Clinton C. Tripp, has made and is about to file herewith a petition in said suit — into the circuit court of the United States for the district of California:

Now, therefore, if the said plaintiff, Clinton C. Tripp, shall enter in said circuit court, on the first day of its next session, a copy of the record in said suit and copies of all pleadings, depositions, and other proceedings in the cause, and shall pay all costs that may be awarded by said circuit court, if said court shall hold that said suit was improperly removed thereto, and shall also appear and enter special bail in said suit, if special bail was originally re-
13 quested therein, then this obligation is to be void, otherwise to remain in full force and virtue.

Signed and sealed in presence of—

CLINTON C. TRIPP.
F. S. SPRING.
J. SOLOMON.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

F. S. Spring and J. Solomon, the sureties in the within bond, being duly sworn, each for himself, says that he is a resident and a freeholder within the State of California, and is worth the sum stated in said bond over and above all his just debts and liabilities, exclusive of property exempt from execution.

F. S. SPRING. [SEAL.]
J. SOLOMON. [SEAL.]

Subscribed and sworn to before me this 13th day of December, 1881.

[SEAL.] WILLIAM HARNEY,
Notary Public.

Endorsed: Bond on petition for removal. Filed December 14th, 1881. R. A. Thompson, clerk, by James Anderson, deputy clerk.

Read on the hearing of the within motion February 13th, 1882.

14 *Amendments Proposed by Defendants.*

In the Superior Court in and for Sonoma County, State of California.

CLINTON C. TRIPP, Plaintiff, }
vs.
SANTA ROSA STREET R. R. *et al.*, Defendants. }

Now comes the defendants R. Fulkerson, Wm. Patterson, T. S. Fulkerson, C. C. Farmer, M. W. Connolly, J. G. Pressley, W. H.

Morris, J. B. Young, Santa Rosa Bank, E. T. Farmer, W. E. Cocke, T. Creighton, Jane Hewett, J. P. Gillooly, David Clark, Otis Gale, Mrs. E. McCann, G. Darden, J. Temple, A. C. McMeans, F. V. Harmon, Mary Walsh, Nora Langdon, L. D. Parks, Christian Hauser, G. Kuykendall, Thomas Duffy, M. Rutledge, P. J. Sullivan, Mary T. Murphy, D. H. Kearney, S. Hutchinson, Wm. E. McConnell, J. Ridgway, Sen., S. Collier, Joseph W. Ridgway, Santa Rosa Manufacturing Co., J. F. Boyce, and John Haas, represented by Rutledge and McConnell; and the defendants T. T. Heald, William Cooper, John Underhill, W. Y. Wilson, S. A. Cooper, H. Moore, W. R. Mead, H. Klute, W. E. Mead, G. N. Savage, J. M. Roney, P. Prince, C. E. Cox, H. Campbell, Wm. Rex, D. S. Sacry, Jacob Wheeler, A. Barnes, Agricultural Park Association, J. H. McGee, L. B. Hall, D. R. Frazier, A. Shane, James H. Campbell, T. B. Hood, John
15 White, L. F. Chinn, R. B. Runyon, S. Carter, H. Kirch, J. P. Clark, J. Hardesty, C. T. Johnson, Mrs. E. Johnson, C. S. Pope, H. E. Richardson, represented by J. H. McGee; and the defendants H. R. Hosser, James Fulton, Thomas Nottingham, S. Wright, B. Hoen, H. B. Hervey, E. Peterson, W. C. Reed, Elsie McNally, George Pflying, Matilda Pflying, P. K. Dibble, E. Dibble, Thomas M. Peugh, Jessie Boothe, D. McLean, W. B. Stanley, Fannie Barnes, W. H. Nash, Margaret Parks, R. B. Cannon, S. A. Taft, Robert W. Bell, Mary C. Spencer, B. S. Young, J. T. Campbell, L. B. Gardner, George Hood, John H. Holman, Rufus Murphy, Alonzo Hiller, Ed. Neblett, P. E. Kraft, Caroline E. Morrow, James Morrow, Jr., O. H. Hoag, J. T. Kinslow, U. P. Quackenbush, represented by J. T. Campbell; and the defendants E. W. Davis, Wm. R. Davis, E. Latapie, W. A. Finley, Pacific M. College, J. S. Taylor, G. P. Noonan, J. Beam, John A. Brown, C. L. Phelps, C. H. Burger, James McReynolds, A. P. Overton, Savings Bank of Santa Rosa, A. P. Overton, administrator of estates of A. T. McKorkle, Lucretia Williams, Walter Phillips, A. M. Darwin, Mary Runyon, I. R. Hailman, Sonoma County, D. N. Carethers, represented by A. B. Ware; and the defendants John Boylan, Joseph S. Alemany, P. H. Noonan, R. A. Thompson, G. A. Goforth, Wm. Kopf, and A. G. Shannon, represented by A. G. Shannon; and the defendants B. F. Kleim, Reed Dutton, Rebecca Branthaver, Daniel Branthaver, T. J. Ludwig, B. O'Donovan, S. A. Randall, Wyman Murphy, Lizzie Armstrong, T. W. Smith, Mary Smith, H. J.
16 Fisher, R. T. Mitchell, A. H. Ingam, Stephen Perry, G. Bew, Wm. Baker, Cornelia W. Woodward, Gracie Lawrence, E. H. Light, Mary A. Smith, Mary F. Dunbaugh, Santa Rosa Street Railroad Co., Santa Rosa Water Co., Mark L. McDonald, Wm. Hill, F. M. Dimmick, John McMinn, David Chamberlain, J. B. Armstrong, Isaac De Turk, Wm. Prindle, J. W. Geary, D. C. Bane, James Adams, W. J. Bryant, H. W. Byington, E. A. Rodgers, L. A. Murdock, Martha Moore, E. H. Smythe, N. J. Stone, J. M. Williams, Lewis Cooper, Charles N. Seigrist, Frank W. Young, Charles E. Wharton, H. Weatherington, R. Weatherington, S. T. Coulter, P. Heisel, E. D. Carter, S. Weller, E. T. Mills, David Burris, Wm. Morter, Josias Davis, F. Boettcher, A. C. Raicey, P. McDouall, W. A. Eliason, Wesley Mock, T. D. Clanton, B. F. Crystal, John Stin, A.

S. Case, L. M. Barton, W. G. Leek, Otis Allen, Caroline Morse, D. L. Haywood, S. S. Kelly, H. R. Skinner, J. D. Cooper, C. H. Thompson, Zelea A. Thompson, George H. Williams, A. Calderwood, G. W. Arnold, A. L. Fisher, Walter V. Middleton, J. J. Badger, W. W. Cooper, Ewen Johnson, T. J. Proctor, H. Rainey, Orin N. Rainey, W. A. S. Holt, Alex. Smith, R McGeorge, R. K. Hayes, Mary F. Wharton, Sarah McDonald, Lucy Ames, Olive R. Burbank, O. T. Woodward, M. J. Woodward, J. H. Ballou, Mary L. Van Doren, J. H. Lillie, E. T. Crane, U. R. Davidson, represented by Darwin C. Allen and R. A. Frame; and the defendants H. Label, Wm. Ducker, Wm. Kennedy, Henry Wise, B. Goldfish,
17 Wm. Wilson, Silas Wightman, John Brown, and L. Schwan, represented by John Brown; and the defendants Mary T. Johnson, John Taylor, J. M. Kirkpatrick, Mrs. M. T. Smith, Fred. Flick, Thos. Hopper, Charles G. Ames, Joseph Wright, H. D. Taft, Mrs. V. Ingram, A. W. Riley, D. S. White, A. W. Riley, administrator of the estate of A. Thomas, deceased; E. C. Ferguson, Mrs. E. Rose, James Quinn, Santa Rosa Gas Light Co., James A. Hardin, Chas. S. Smith, Joseph H. Griggs, Wiley Coughrane, Joseph Childers, P. H. Rickliff, A. H. Loucks, C. F. Juilliard, Charles D. Frazee, W. S. M. Wright, Barclay Henley, Mrs. M. J. Atkins, represented by Henley and Hardin; and the defendants Santa Rosa Masonic Hall Association, James Warner, Guy E. Grosse, Mary T. Redmond, Maria Richardson, Wm. H. Forsyth, George Lehman, James C. Maylor, E. A. Seigelken and as surviving partner of A. D. Seigelken and Bro., Fanny Mather, F. Korbel and Bros., and Antone Korbel, Isaac Parsons, C. F. Copeland, A. S. Wright, Leonidas Gautier, Richard Hodgson, C. H. Bumpus, S. H. Bradlee, Elizabeth A. Gibbs, sued as Anna Dillon; George A. Johnson, R. S. Vaill, Sarah P. Lynch, sued as Mary McCoy, H. Heidorn, Louis Fusier, Mary C. Powers, sued under a fictitious name; T. J. Crane, James L. Clark, Benjamin Forsyth, as administrator deceased; David Powers, represented by George A. Johnson; and the defendants Catherine Grove, Sarrilla McBrien, Louis Wilde, and A. M. Hatfield, sued as A. M. Gobell, represented by John Brown, Esq.; and the defendants J. H. Ashier, Wm.
18 Fahey, and John Woods, represented by Darwin C. Allen and R. A. Frame, and without waiving any rights to them or either of them belonging in respect to this plaintiff's so-called bill of exceptions, and offer, propose, and file the following as amendments and objections to the above-named plaintiff's bill of exceptions in the above-entitled cause; and first object to the settlement of said bill of objections upon the following grounds, viz:

1st. The proceedings, orders, and papers embodied in said bill of exceptions were not had, made, or taken or filed in the above-entitled cause.

2d. The plaintiff does not designate in the cases of what defendant or defendants his bill of exceptions is to be settled and filed.

3d. Said plaintiff cannot connect any of the defendants who have had separate trials awarded them together in this bill of exceptions.

4th. The bill of exceptions of said plaintiff in form does not conform to the rules of said court.

5th. Each defendant who filed a separate answer — obtained a separate judgment of dismissal when his case was set and called for trial demands that his case remain distinct and separate on appeal, if an appeal is sought in his case.

The above-named defendants offer and propose the following minutes and proceedings in said court as amendments to said plaintiff's bill of exceptions:

19 *Amendment* 1, *Nov.* 1*st*, 1881.

CLINTON C. TRIPP *vs.* SANTA ROSA STREET R. R. Co. *et al.* } Order Allowing Certain Defendants to Answer Separately.

T. J. Bowers, judge presiding, at request of J. Temple, judge.

Comes now into open court Rutledge and McConnell, counsel for R. Fulkerson *et al.*, and moves the court to place this cause on the calendar, which motion was granted and so ordered by the court (neither plaintiff nor his — being present), whereupon said Rutledge and McConnell, appearing as counsel for defendants R. Fulkerson, Wm. Patterson, T. S. Fulkerson, C. C. Farmer, M. W. Connolly, J. G. Pressley, Wm. H. Morris, J. B. Young, Santa Rosa Bank, E. T. Farmer, W. E. Cooke, T. Creighton, Jane Hewitt, E. P. Gillooly, David Clark, Otis Gale, Mrs. E. McConnor, Geo. Dardin, J. Temple, O. C. McMeans, F. V. Harman, Mary Walsh, Norah Langdon, L. D. Parks, Christian Hauser, G. Kykendall, Thomas Duffy, M. Rutledge, P. J. Sullivan, Mary T. Murphy, D. H. Kearney, S. Hutchinson, W. E. McConnell, J. Ridgway, Sr., S. Collier, Jos. W. Ridgway, Santa Rosa Manufacturing Co., J. F. Boyce, and John Haas; whereupon James H. McGee, appearing as counsel for defendants T. T. Heald, Wm.
20 Cooper, John Underhill, W. Y. Wilson, S. R. Cooper, H. Moller, W. R. Mead, H. Klute, W. E. Mead, G. N. Savage, J. M. Roney, P. Prince, C. B. Cox, H. Campbell, Wm. Rex, D. S. Sacry, Jacob Wheeler, A. Barnes, Agricultural Park Association, J. H. McGee, L. B. Hall, D. R. Frazee, A. Shane, Jos. H. Campbell, T. B. Hood, John White, L. F. Chinn, R. B. Runyon, S. Carter, H. Kirsch, J. P. Clark, J. Hardesty, C. F. Johnson, Mrs. E. Johnson, C. S. Pope, and H. E. Richardson; and J. T. Campbell, appearing as counsel for defendants H. R. Hesser, James Fulton, Thomas Nottingham, S. Wright, B. Hoen, N. B. Hervey, Elizabeth Peterson, W. C. Reed, Elsie McAnally, George Pflying, Matilda Pflying, P. K. Dibble, Elizabeth Dibble, Thomas M. Peugh, Jessie Booth, D. McLean, W. B. Stanley, Fannie Barnes, W. H. Nash, Margaret Parks, R. B. Cannon, S. A. Taft, Robert W. Bell, Mary C. Spencer, B. S. Young, J. T. Campbell, L. B. Gardner, George Hood, John H. Holman, Rufus Murphy, Alonzo Heller, E. Neblett, P. E. Kraft, Caroline E. Morrow, James Morrow, Jr., O. H. Hoag, J. F. Kinslow, and U. P. Quackenbush; and A. B. Ware, appearing for the defendants E. W. Davis, Wm. R. Davis, E. Latapie, W. A. Finley, Pacific Methodist College, John S. Taylor, Geo. P. Noonan, J. Beam, John A. Brown, C. L. Phelps, C. H. Burger, James McReynolds, A. P.

Overton, Savings Bank of Santa Rosa, A. P. Overton, administrator of the estate, A. T. McCorkle, Lucretia Williams, Walter Phillips, A. M. Darwin, Mary Runyon, J. R. Hailman, Sonoma County, and D. N. Carithers; and A. G. Shannon, appearing as counsel
21 for defendants John Boylan, Joseph S. Alemany, P. H. Nooman, R. A. Thompson, J. A. Goforth, Wm. Kopf, and A. G. Shannon; R. A. Frame and Darwin C. Allen, appearing as counsel for defendants B. F. Kleim, Reed Dutton, Rebecca Branthaver, Daniel Branthaver, Wyman Murphy, B. O'Donovan, S. A. Rendall, T. J. Ludwig, Lizzie Armstrong, T. W. Smith, Mary Smith, H. J. Fisher, R. T. Mitchell, A. H. Ingam, Stephen Peery, George Bew, Wm. Baker, Cornelia W. Woodward, Gracie Lawrence, E. H. Light, Mary A. Smith, Mary F. Dembough, the Santa Rosa Street Railroad Company, Santa Rosa Water Co., Mark L. McDonald, Wm. Hill, F. M. Dimmick, John McMinn, David Chamberlain, J. B. Armstrong, Isaac de Turk, Wm. Prindle, J. W. Gray, D. C. Baine, James Adams, Wm. J. Bryant, H. W. Byington, E. A. Rodgers, L. A. Murdock, Martha A. Moore, E. H. Smythe, N. J. Stone, J. M. Williams, Lewis Cooper, Charles N. Seigrist, Frank W. Young, Charles V. Wharton, H. Weatherington, R. Weatherington, S. T. Coulter, Paul Heisel, E. D. Carter, S. Weller, E. T. Mills, David Burris, Wm. Morter, Josiah Davis, F. Boetcher, A. C. Rainey, P. M. McDonald, W. A. Eliason, Wesley Mock, T. D. Clanton, B. F. Crystal, John Iten, A. L. Case, L. M. Benton, Wm. G. Leek, Otes Allen, Caroline Moore, D. L. Hayward, S. S. Kelly, H. R. Skinner, J. D. Cooper, C. H. Thompson, Zelia A. Thompson, Geo. H. Williams, A. Calderwood, G. W. Arnold, A. L. Fisher, Walter V. Middleton, J. J. Badger, Wm. W. Cooper, Ewen John-
22 son, T. J. Proctor, H. Rainey, Orin W. Rainey, W. A. S. Holt, Alex. Smith, R. McGeorge, R. H. Hayes, Mary F. Wharton, Sarah McDonall, Lucy Ames, Olive R. Burbank, O. F. Woodward, M. J. Woodward, J. A. Ballou, Mary L. Van Doren, J. H. Lillie, E. T. Crane, and N. R. Davidson; and John Brown, appearing as counsel for the defendants H. Label, William Ducker, William Kennedy, Henry Wise, B. Goldfish, William Wilson, Silas Wightman, John Brown, and L. Schwan; and Henley and Hardin, appearing as counsel for defendants Mary T. Johnson, John Taylor, J. M. Kirkpatrick, Mrs. M. T. Smith, Fred Flick, Thomas Hopper, Charles G. Ames, Joseph Wright, H. D. Taft, Mrs. V. Ingram, A. W. Riley, D. S. White, A. W. Riley, administrator of the estate of A. Thomas, deceased, E. C. Ferguson, Mrs. Elizabeth Ross, James Quinn, Santa Rosa Gaslight Co., James A. Hardin, Chas. S. Smith, Joseph H. Griggs, Wiley Coughrane, Joseph Childers, P. H. Rickliff, A. H. Loucks, C. F. Juillard, Chas. D. Frazee, W. S. M. Wright, Barclay Henley, and Mrs. N. J. Atkins; whereupon each of the above-named counsel jointly moved the court for leave to sever the names of their respective clients from the demurrers heretofore filed herein and to file separate answers for each defendant as hereinabove named, which motion was granted by the court and so ordered.

Court adjourned until to-morrow at 10 o'clock a. m.

Nov. 25, A. D. 1881.

23 Honorable Thomas J. Bowers, superior judge of Marin county, Cal., presiding, and holding court at request of Hon. J. Temple, judge of the superior court of Sonoma county, Cal.

CLINTON C. TRIPP *vs.* SANTA ROSA STREET RAILROAD COMPANY *et al.*	Certain Cases Set for Trial December 13, 1881.

Separate answers of the following-named defendants herein having been filed and served, and this cause having been duly placed on the calendar, and no appearance of the plaintiff in person or his counsel, now comes into court James H. McGee, J. T. Campbell and A. G. Shannon, appearing as counsel for defendants James P. Clark, Adam Shane, T. B. Hood, Rhoda Cooper, G. N. Savage, Henry Muller, Wm. Rix, Peter Prince, J. M. Roney, S. R. Cook, A. Barnes, E. Johnson, Henry Kluk, Jno. M. White, W. E. Mead, Wm. Cooper, H. E. Richardson, L. B. Hall, Susan M. Sacry, H. Campbell, Jacob Headsly, T. T. Heald, Mrs. C. F. Johnson, Louis F. Chenn, Joseph Kersh, W. Y. Wilson, John Underhill, C. B. Cox, Jacob Wheeler, R. B. Runyon, C. S. Pope, R. A. Thompson, A. G. Shannon, James H. McGee, M. Byron, W. R. Mead, J. Haltiner, John Boylan, P. H. Noonan, the City of Santa Rosa, Agricultural Park Association, Wm.
24 Mitzger, Wm. Kopp, Joseph S. Alemany, J. A. Goforth, L. Carter, Jos. H. Campbell, and D. S. Sacry, and moved the court that all the above-named defendants be allowed separate trials herein, and that said cause be set down for trial on the 13th day of December, 1881, at 10 o'clock a. m., which motion was granted and so ordered; and A. B. Ware appearing as counsel for defendants Mary Runyon, Geo. P. Noonan, J. R. Hailman, C. L. Phillips, Patrick Gleason, Lucretia Williams, Sonoma County, E. Latapie, C. H. Burger, James McReynolds, Walter Phelps, and A. B. Ware, and moved the court that all clients that he appeared for be allowed separate trials herein, and that the said cause be set for trial on the 13th day of December, 1881, at 10 o'clock a. m., which motion was granted and so ordered by the court; and H. S. Willson and Thomas Rutledge appearing as counsel for defendants T. W. Blair, C. De Lange, Christian Church, and Sarah M. Burnett, and moved the court to grant separate trials for their said clients as aforesaid, and that said cases be set for trial on the 13th day of December, 1881, at 10 o'clock a. m., which motion was granted and so ordered; and Rutledge and McConnell appearing as counsel for defendants Otis Gale, John Haas, Susan Collier, A. C. McMeans, Nora Langdon, M. Rutledge, John G. Pressley, David Clark, Mary T. Murphy, Jane Hewett, C. C. Farmer, George Darden, D. H. Kearney, P. J. Sullivan, Jackson Temple, and T. S. Sullivan, and moved the court
25 to grant separate trials for their said clients herein, and set said cases for trial on this 13th day of December, 1881, at 10 o'clock a. m., which motion was granted and so ordered; and George A. Johnson appearing as counsel for defendants Leonidas Gautier, Mary C. Powers, Elizabeth A. Gibbs, David Powers, Louis

Fensier, Benjamin Forsythe, as administrator of the estate of H. C. Mizer, deceased; Sarah P. Lynch, T. J. Crane, H. Hudorn, S. R. Vail, James Leonard Clark, George A. Johnson, Mary T. Redmond, W. H. Forsythe, Fanny Muther, Mary Richardson, C. H. Bumpus, James Warner, George Lehman, James C. Mailer, S. H. Bradlee, Richard Hodgson, E. A. Seigelken, and as surviving partner of A. D. Seigelken and Bro., Isaac Parsons, C. F. Copeland, Masonic Hall Association, A. S. Wright, Francis Korbel, Antone Korbel and Joseph Korbel, firm of Korbel and Brothers, and Antone Korbel, and Guy E. Grosse, and moved the court to grant separate trials herein to his said clients, and to set their said cases for trial on the 13th day of December, 1881, at 10 o'clock a. m., which motion was granted by the court and so ordered; and James H. McGee appearing as counsel for defendants H. B. Martin and Christian Judd, and moved the court to grant separate trials to his said clients herein, and that their trials be set down for the 13th day of December, 1881, at 10 o'clock a. m., which motions were granted and so ordered; and Henley & Hardin appearing as counsel for defendants W. S. M. Wright, Charles D. Frazee, C. F. Juilliard, A. H. Loucks, P. H. Rickliff, Joseph
26 Childers, Wiley Coughran, Joseph H. Griggs, Charles S. Smyth, James A. Hardin, Santa Rosa Gas Light Company, James Quinn, Mrs. Elizabeth Ross, E. C. Ferguson, A. W. Riley, administrator of the estate of A. Thomas, deceased; D. S. White, A. W. Riley, Mrs. B. Ingram, H. D. Taft, Joseph Wright, Charles G. Ames, Thomas Hopper, Fred. Frick, Mrs. M. T. Smith, J. M. Kirkpatrick, Mary T. Johnson, John Taylor, Mrs. N. J. Atkins, Barclay Henley, and moved the court to grant separate trials to their said clients herein, and to set said cases down for trial on the 13th day of December, 1881, at 10 o'clock a. m., which motions were granted and so ordered; J. T. Campbell, A. G. Shannon, and J. H. McGee appearing as counsel for defendants E. Neblett, J. F. Kinslow, H. R. Hesser, M. E. Slater, Jesse Boothe, P. H. Dibble, Elizabeth Dibble, Thomas M. Peugh, Elsie McAnally, B. Horan, James Fulton, N. B. Hervey, Elizabeth Peterson, W. C. Reed, George Pflying, Matilda Pflying, George Hood, L. B. Gardner, B. S. Young, J. T. Campbell, Mary C. Spencer, Robert W. Bell, Caroline E. Morrow, O. H. Hoag, Rufus Murphy, James Morrow, Jr., John H. Holman, E. E. Morrow, Alonzo Heller, P. E. Kraft, S. A. Kraft, R. B. Cannon, Margaret Parks, W. H. Nash, Fannie Barnes, W. B. Stanley, D. McLean, S. Wright, W. J. Semple, and Thomas Nottingham, and moved the court to grant separate trials to their said clients herein, and to set said cases down for trial on the 13th December, 1881, at 10 o'clock a. m., which motions were granted and so ordered; and R. A. Frame and Darwin C. Allen ap-
27 pearing as counsel for defendants C. W. Seigrist, H. J. Fisher, B. F. Crystal, John McMinn, Lucy Ames, Daniel Branthaver, J. H. Little, Wm. J. Bryant, Mary L. Van Doran, S. S. Colby, Wyman Murphy, A. C. Rainey, John Shin, Santa Rosa Water Co., S. Weller, Mrs. R. K. Hayes, A. H. Ingram, Cornelia W. Woodward, Rebecca Branthaver, Mary E. Tasker, Mary O'Donovan and B. O'Donovan, Mrs. Oliva R. Burbank, Santa Rosa Street Railroad, Reed Dutton, F. Boettcher, D. L. Hayward, Mrs. S. E. Phelps, N. R. Davidson, Mrs.

A. S. Chase, J. A. Ballou, James Adams, J. D. Cooper, Mrs. Mary Ann Smith, George Bew, A. H. Smith, Otis Allen, Josias Davis, F. M. Dimmick, Mrs. Gracie Lawrence, J. J. Badger, Austin Carlton, J. M. Williams, S. J. Ludwig, Zelia A. Thompson, Robert McGeorge, George W. Arnold, Sarah C. Davis, C. H. Thompson, S. S. Cooper, W. H. Eliason, G. H. Williams, E. H. Light, David Burris, Stephen Perry, Wm. Hill, J. B. Davis, Ewen Johnson, E. L. Crane, Sarah McDonald, E. T. Morgan, H. Weatherington, R. Weatherinton, S. T. Coulter, Wesley Mock, Mery Smith, E. T. Mills, E. A. Rodgers, Wm. Baker, R. F. Mitchell, C. A. Murdock, H. W. Byington, T. J. Proctor, T. D. Clayton, S. A. Rendall, Henry Rainey, M. L. McDonald, J. B. Armstrong, M. J. Woodward, O. T. Woodward, Wm. G. Leek, E. H. Smythe, W. A. S. Holt, Orin N. Raney, Mrs. L. M. Benton, Isaac De Turk, David Chamberlain, Frank W. Young, Montrose F. Calderwood, A. L. Fisher, E. D. Carter, Paul Heisel, B. F. Keim, N. J. Stone, Walter V. Middleton, Wm. N. Cooper, H. R. Skinner, James W. Gray, Wm. Prindle,
28 D. C. Bane, Caroline Morse, Jacob J. Lewis, Mrs. Mary F. Dembaugh, Wm. Morter, and Mrs. Mary F. Wharton, and moved the court to grant their said clients separate trials herein, and set down their said cases for trial on the 13th day of December, 1881, at 10 o'clock, a. m., which motions were granted by the court and so ordered; and John Brown appearing as counsel for defendants L. Schwan, H. Label, W. Kennedy, Henry Wise, Wm. Ducker, S. Wightman, B. Goldfish, Wm. Wilson, John Brown, Alice M. Hatfield Louis Wilde, Catherine Graves, and Savilla McBreen, and leave of court to withdraw his demurrer heretofore filed for the aforesaid defendants, he having filed answers for said defendants, which motions where granted by the court were said John Brown, counsel for said defendants, moved the court that each of said clients be allowed separate trials herein, and that said cases be set down for trial on the 13th day of December, 1881, at 10 o'clock, a. m., which motions were granted and so ordered by the court.

Amendment No. II.

In the Superior Court in and for the County of Sonoma, State of California, Department No. 2, December 13th, 1881.

Court met at 10 o'clock a. m., Hon. Thomas J. Bowers presiding at request of Hon. J. Temple, judge of said superior court.

29

CLINTON C. TRIPP *vs.* SANTA ROSA RAILROAD COMPANY *et al.*	Case Called for Trial and Continued until To-morrow at 1 o'clock p. m.

This case coming on regularly for trial this day as to the respective defendants who had served and were allowed separate trials by order of this court made and entered on the 17th day of November, 1881, and to all cases set for trial on the 25th day of November, 1881, who had filed separate answers and were allowed separate trials herein and no appearance of the plaintiff in person or by counsel and the court having had plaintiff and his counsel called,

and no one answering or appearing, and Henley & Hardin, James H. McGee, A. B. Ware, J. T. Campbell, A. G. Shannon, George A. Johnson, Thomas Rutledge, R. A. Frame, D. C. Allen, Rutledge & McConnell, and John Brown appearing as counsel for the defendants herein whose cases have been severally set for this day and asked the court to proceed with the trials of said respective cases, which motion was denied by the court; whereupon the court, on its own motion, ordered each, every, and all cases set for trial this day, to be and the same are hereby continued until the 14th day of December, 1881, at 1 o'clock p. m., and directed the clerk of this court to at once send a dispatch to the plaintiff, Clinton C. Tripp, in care of his counsel, P. G. Galpin, at the city of San Francisco, informing them of the order of this court continuing said
30 each and several cases set for trial this day until to-morrow at 1 o'clock p. m., and at which time said cases will be tried unless good cause be shown for a continuance herein.

Whereupon Rutledge and McConnell, counsel for defendants Samuel Hutchinson, M. W. Connolly, F. V. Harman, W. E. Cocke, Santa Rosa Manufacturing Company, L. D. Parks, Thomas Duffy, and Mary E. Duffy, William H. Morris, B. F. Ford, Mrs. E. Kidd, *and* moved the court to set down the above-named cases for separate trials for each of said defendants herein on to-morrow, December 14th, 1881, at 1 o'clock p. m., which motions were granted and so ordered.

And Whipple and Oates appearing as counsel for defendants Patrick Leddy, Wm. Finland, Henry Baker, A. Koecher, Jacob McReynolds, Robert Ross, Jr., A. J. Caldwell, W. T. Ink, and moved the court to set down the above-named cases for separate trials for each of said defendants herein on December 14th, 1881, at 1 o'clock p. m., which motions were granted and so ordered herein; and W. W. Porter and Whipple & Oates appearing as counsel for defendants A. Fine, D. R. Frazer, First Baptist Church, W. W. Porter, and R. P. Smith, and moved the court to set down the above-named cases for separate trials for each of said defendants on December 14th, 1881, at 1 o'clock p. m., which motions were granted and so ordered; and James H. McGee, J. T. Campbell, and A. G. Shannon appearing as counsel for defendants Mary E. Bond, H. Metzger, Mary A. McBean, F. B. Glynn, and P. Kelleher, and moved
31 the court to set down the above-named cases for separate trials for each of said defendants on December 14th, 1881, at 1 o'clock p. m., which motions were granted and so ordered; and A. B. Ware appearing as counsel for defendants Pacific Methodist College, W. A. Finley, John S. Taylor, John A. Brown, and the Savings Bank of Santa Rosa, and moved the court to set down the above-named cases for separate trial for each of said defendants on December 14th, 1881, at 1 o'clock p. m., which motions were granted and so ordered; and Murray Whallon appearing as counsel for defendant Talbert Pauli, the legally appointed, qualified, and acting executor of the estates of Gustave Theodore Pauli, deceased, and moved the court to set down said case for separate trial of said de-

fendant's case on December 14th, 1881, at 1 o'clock p. m.; which motion was granted and so ordered.

Amendment No. III.

In the Superior Court in and for the County of Sonoma, State of California, December 14th, 1881, Department No. 2.

Court met at 1 o'clock p. m.

Hon. Thos. J. Bowers, judge, presiding at request of Hon. Jackson Temple.

CLINTON C. TRIPP *vs.* SANTA ROSA STREET RAILROAD COMPANY *et al.* } Motion to Remove Cause to the U. S. Circuit Court Argued and Submitted.

32 This cause coming on regularly to be heard, this being the day to which certain causes were continued for trial, E. J. Linforth, Esq., appearing for and on behalf of said plaintiff, and Henley and Hardin, James H. McGee, J. T. Campbell, A. G. Shannon, George A. Johnson, Rutledge and McConnell, A. B. Ware, R. A. Frame, Darwin C. Allen, W. W. Porter, John Brown, Whipple and Oates, Murray Whallon appearing for the defendants, whereupon plaintiff's counsel, E. J. Linforth, filed plaintiff's affidavit for a continuance of this cause, which affidavit was as follows, and the only cause or ground offered for or in support of said plaintiff's motion for a continuance:

In the Superior Court of the County of Sonoma, State of California

CLINTON C. TRIPP, Plaintiff, *vs.* SANTA ROSA STREET RAILROAD *et al.*, Defendants.

Clinton C. Tripp, being duly sworn, says that he is plaintiff herein; that the complaint was filed in February, 1881; that there are some one thousand (1,000) defendants; that since said date he has had H. G. Parks employed constantly in serving the summons since the 7th day of September, 1881, and about five (500) hundred parties have been served; that said H. G. Parks is still employed in serving said summons, and plaintiff expects to have all the de-

33 fendants served within the next sixty (60) days; that said cause has never been set for trial within the last two or three weeks, and at the present time it is not at issue in regard to a large number of defendants.

Deponent further says that said action involves the title to a large part of the city of Santa Rosa and a portion of the county of Sonoma adjoining, and that he cannot have an impartial trial in said county for the reason that it would be almost impossible to impannel a jury unbiased, and who have not already formed and expressed an opinion on the merits of this case.

That the preparation for the trial of this case will involve a great amount of labor, as it involves the examination of numerous titles,

and that to force the deponent to try this case without preparation and counsel, in a community interested and avowedly hostile to his title, would be a mockery of judicial proceedings.

CLINTON C. TRIPP.

Subscribed and sworn to before me this 13th day of December, 1881.

WILLIAM HARNEY,
Notary Public.

And moved the court to grant a continuance of all the cases set for trial herein, and after argument of counsel upon the merits of said motion and sufficiency of said affidavit the court denied plaintiff's motion, whereupon plaintiff's counsel, E. J. Linforth, then filed plaintiff's petition and accompanying bond, praying for a removal of this cause to the circuit court of the United States for
34 California, and moved the court to grant said petition, and after argument of counsel for respective parties the court took said motion under advisement until December 15th, 1881, at 10 o'clock, a. m., and ordered all cases heretofore set for trial continued until said time.

Court adjourned until December 15th, 1881, at 10 o'clock a. m.

Amendment No. IV.

In the Superior Court in and for the County of Sonoma, State of California, December 15th, A. D. 1881, Department No. 2.

Court met at 10 o'clock a. m., Hon. Thomas J. Bowers, judge, presiding at the request of Hon. Jackson Temple.

CLINTON C. TRIPP
vs.
SANTA ROSA STREET RAILROAD COMPANY *et al.*
} Motion for Removal Denied and Dismissed as to 294 Defendants.

This cause coming on regularly to be heard upon plaintiff's motion heretofore submitted for a removal of this cause to the circuit court of the United States for California for trial and for separate trials herein of certain defendants named in the orders of this court entered on the 25th day of November, 1881, and on the 13th day of December, 1881, respectively, and the court having directed the plaintiff and his counsel, P. G. Galpin, called at the door and no
35 answer, either plaintiff in person or his counsel appearing, and the defendants appearing by their counsel, James H. McGee, J. T. Campbell, A. G. Shannon, A. B. Ware, Thomas Rutledge, H. S. Wilson, Rutledge & McConnell, George A. Johnson, Henley & Hardin, R. A. Frame, Darwin C. Allen, John Brown, W. W. Porter, Whipple & Oates, and Murray Whallon.

Whereupon the court rendered its decision upon plaintiff's motion and petition for a removal of this cause to the circuit court of the United States for California upon said motion and petition and filed the following decision on said motions and no other:

In the Superior Court in and for the County of Sonoma, State of California.

CLINTON C. TRIPP, Plaintiff,
vs.
SANTA ROSA STREET R. R. *et al.*, Defendants.

Decisions and Order of the Court on Application of Plaintiff to Remove said Action to the Circuit Court of the United States.

By the COURT:

The matter under consideration — upon the petition of Clinton C. Tripp, plaintiff in the suit, asking for a removal of the case from this court to the United States circuit court for the northern district of California.

36 The condition of the case is that the complaint was filed in this court on the 9th of March of this year.

On the 17th day of November the defendants J. P. Clark, Adam Shane, T. B. Hood, Rhoda Cooper, G. N. Savage, J. M. Roney, S. R. Cooper, A. Barnes, E. Johnson, Henry Klute, John M. White, W. E. Mead, Wm. Cooper, H. E. Richardson, L. B. Hall, Susan M. Sacry, H. Campbell, Jacob Hardesty, T. T. Heald, Mrs. C. T. Johnson, Lewis F. Chinn, Joseph Kirsh, W. Y. Wilson, John Underhill, C. B. Case, Jacob Wheeler, R. B. Runyon, C. S. Pope, R. A. Thompson, A. G. Shannon, J. H. McGee, M. Byrne, W. R. Mead, J. Haltiner, John Boylan, P. H. Noonan, The City of Santa Rosa, Agricultural Park Association, W. Metzger, W. Kopf, Joseph S. Alemany, J. A. Goforth, L. Carter, J. H. Campbell, D. S. Sacry, Mary Runyon, G. P. Noonan, J. R. Hailman, C. L. Phelps, Patrick Gleason, Lucretia Williams, Sonoma County, A. Latapie, C. H. Burger, James McReynolds, Walter Phillips, A. B. Ware, T. N. Blair, C. Delange, Christian Church, Sarah M. Burnett, Otis Gale, John Haas, Susan Collier, A. C. McMeans, John G. Pressley, Nora Langdon, M. Rutledge, David Clark, Mary T. Murphy, Jane Hewett, C. C. Farmer, George Darden, D. H. Kearney, P. J. Sullivan, Jackson Temple, T. S. Fulkerson, Leonidas Gautier, Mary C. Powers, Elizabeth A. Gibbs, David Powers, Louis Fensier; Benjamin Forsyth, as administrator of

37 the estate of H. C. Mizer; Sarah P. Lynch, T. J. Crane, H. Heidorn, R. S. Vail, James Leonard Clark, George A. Johnson, Mary T. Redmond, W. H. Forsythe, Fanny Muther, Mariah Richardson, C. H. Bumpus, James Warner, George Lehman, James C. Mailer, S. H. Bradlee, Richard Hodgson; E. A. Seigelken, as surviving partner of A. D. Seigelken & Bros.; Isaac Parsons, C. F. Copeland, Masonic Hall Association, A. S. Wright; Francis Korbel, Antone Korbel, and Joseph H. Korbel, firm of Korbel Bros.; Antone Korbel, Guy E. Grosse, H. B. Martin, Christian Judd, W. S. M. Wright, Chas. D. Frazee, C. F. Juilliard, A. H. Loucks, P. H. Rickliff, Joseph Childers, Wiley Coughran, Joseph H. Griggs, Charles S. Smith, James A. Hardin, Santa Rosa Gas-Light Company, James Quinn, Mrs. Elizabeth Ross, E. C. Ferguson; A. W. Riley, administrator of the estate of A. Thomas, deceased; D. S. White, A. W. Riley,

Mrs. V. Ingram, H. D. Taft, Joseph Wright, Charles G. Ames, Thomas Hopper, Fred. Fick, Mrs. M. T. Smith, J. M. Kirkpatrick, Mary F. Johnson, John Taylor, Mrs. M. J. Atkins, Barclay Henley, E. Neblett, J. F. Kinslow, H. R. Keser, M. E. Slater, Jesse Booth, P. K. Dibble, Thomas M. Peugh, Elsie McAnally, B. Hoen, James Fulton, N. B. Harvey, Elizabeth Peterson, W. C. Reed, George Pflying, Matilda Pflying, George Wood, L. B. Gardner, B. S. Young, J. T. Campbell, Mary C. Spencer, Robert W. Bell, Caroline E. Morrow, O. H. Hoag, Rufus Murphy, Alonzo Heilhs, P. E. Kraft, S. A. Taft, R. B. Cannon, Margaret Parks, W. H. Nash, Fannie Barnes, W. B. Stanley, D. McLean, S. Wright, Thomas Nottingham, E. N. Seigrist,
H. J. Fisher, B. F. Crystal, John McMinn, Lucy Ames,
38 Daniel Branthaver, J. H. Lillie, William J. Bryant, Mary L. Van Doren, S. S. Kelly, Wyman Murphy, A. C. Rainey, John Iten, Santa Rosa Water Company, S. Weller, Mrs. R. K. Hays, A. H. Ingham, Cornelia W. Woodward, Rebecca Branthaver, Mary E. Tasker, Mary O. Donavan, Mrs. Olive R. Burbank, Santa Rosa Street Railroad, Reed Dutton, F. Boettcher, D. Haywood, Mrs. S. E. Phelps, W. R. Davidson, Mrs. A. S. Case, J. A. Ballou, James Adams, J. D. Cooper, Mrs. Mary Ann Smith, George Bew, Otis Allen, Josias Davis, F. M. Dimmic, Mrs. Gracie Lawrence, J. J. Badger, Austin Carlton, J. M. Williams, T. J. Ludwig, Zelia Thompson, Robert McGeorge, George W. Arnold, Sarah C. Davis, C. H. Thompson, S. S. Cooper, W. A. Eliason, G. H. Williams, E. H. Light, Daniel Burris, Stephen Peery, William Hill, J. B. Davis, Ewen Johnson, E. T. Crane, Sarah McDouall, E. P. Morgan, A. Weatherington, R. Weatherington, S. T. Coulter, Wesley Mook, Mary Smith, E. T. Mills, E. A. Rodgers, William Baker, R. T. Mitchell, S. A. Murdock, H. W. Byington, T. J. Proctor, T. D. Clanton, S. A. Rendall, Henry Roney, M. L. McDonald, J. B. Armstrong, M. J. Woodward, O. T. Woodward, Wm. G. Leek, E. H. Smythe, W. A. S. Holt, Oren N. Roney, Mrs. S. M. Benton, Isaac De Turk, David Chamberlain, Frank W. Young, Montrose F. Calderwood, A. L. Fisher, E. D. Carter, Paul Heisel, B. F. Kein, N. J. Stone, Walter V. Middleton, William W. Cooper, H.
R. Skinner, James W. Gray, William Prindle, D. C. Bane,
39 Caroline Morse, Jacob J. Lewis, Mrs. Mary F. Dunbaugh, William Morter, Mrs. Mary F. Wharton, who had before such motion filed separate answers in the case, elected to have separate trials and appeared in court and asked leave to sever, and that their cases might be tried separately, and it appearing in the several answers that the said defendants and each of them before referred to asserted and claimed title in themselves to distinct and separate parcels of land, the same being parts of the land described in the complaint—

The court granted the application, and an order was entered allowing them to sever and to have separate trials.

On the 25th day of November, on application of the several defendants, the cases above mentioned and each of them were set for trial in this court for the 13th day of December, at 1 o'clock. On that day, to wit, the 13th day of December, the court being then in session, the cases were severally called for trial, and the defendants

severally appeared, answered "ready," and demanded the cases should proceed to trial. No person appearing for or on behalf of the plaintiff, and after being called at the door and failing to respond, the case, on motion of the court and over the objection of defendants, is continued until 1 o'clock on the 14th, and the court directed the clerk to notify plaintiff by telegraph of said order.

At which date and time the cases again were called, and Mr. E. J. Linforth appeared for and on behalf of the plaintiff, Clinton C. Tripp, and made an application for continuance, filing as a
40 basis of such application an affidavit, of which the following is a copy:

In the Superior Court of the County of Sonoma, State of California.

CLINTON C. TRIPP, Plaintiff,
vs.
SANTA ROSA STREET R. R. *et al.*, Defendants.

STATE OF CALIFORNIA,
City and County of San Francisco, } ss:

Clinton C. Tripp, being duly sworn, says that he is the plaintiff herein; that the complaint was filed in February, 1881; that there are some one (1,000) thousand defendants; that since said date he has had H. G. Parks employed constantly in serving the summons since the 7th day of September, 1881, and about five (500) hundred parties have been served; that said H. G. Parks is still employed in serving the said summons, and plaintiff expects to have all the defendants served within the next sixty (60) days; that said cause has never been set for trial until within the last two or three weeks, and at the present time it is not at issue in regard to a large number of the defendants.

Deponent further says that said action involves the title to a large part of the city of Santa Rosa and a portion of the county of Sonoma adjoining, and that he cannot have an impartial trial in said
41 county, for the reason that it would be almost impossible to impanel a jury unbiased, and who have not already formed and expressed an opinion on the merits of the case.

That the preparation for the trial of this cause will involve a great amount of labor, as it involves the examination of numerous titles, and that to force the deponent to try this case without preparation and counsel in a community interested and avowedly hostile to his title would be a mockery of judicial proceedings.

CLINTON C. TRIPP.

Subscribed and sworn to before me this 13th day of December, 1881.

WILLIAM HARNEY,
Notary Public.

Endorsed: Affidavit of Clinton C. Tripp. Filed December 14th, 1881. R. A. Thompson, clerk, by James Anderson, deputy clerk.

After hearing argument of counsel on said application, the court having considered the same, the motion for a continuance was denied. Thereupon Mr. Linforth, on behalf of said plaintiff, Tripp, filed the petition and bond for removal, which is the basis of this motion.

The motion for removal is objected to severally by the defendants, and it is urged upon the court—

First. That the action is not one for which a removal is provided by the Revised Statutes.

Second. That the application is too late in point of time.

42 It is claimed by the defendants that the pleadings in this case do not show a case which is proper to be removed under the act of the 3d of March, '75, but I have not considered that question, being impressed with the belief that upon that particular matter this court is bound by the petition.

The other question as to whether or not the petition is sufficient in point of time is a question that I see no way to avoid the determination of. It is undoubtedly a mixed question of law and of fact, one which must not only be legally determined, but the fact upon which the conclusion rests; among the rules providing for proceedings and trials of causes in this court are the following:

Rule 2. There shall be four sessions of said court, commencing on the first Monday of January, April, July, and October, and special sessions on every Monday other than the Mondays above named.

Rule 3. The clerk shall complete the calendars for each department on the Saturday next preceding the beginning of each regular and special session of said court, and shall on each court day prepare for the court a list of the cases set for that day.

Rule 5. The law calendar of this department shall consist of all equity cases, issues of law, motions, and cases in which default has been taken, but in which judgment must be rendered by the court, and all motions will be heard and cases set for trial or otherwise disposed of.

Rule 6. When a demurrer to a complaint is overruled or withdrawn without argument the defendant shall have ten days

43 or such other time as may be allowed to answer; after the answer is filed, if no demurrer shall be filed to the same, the court may set down the cause for trial.

When a demurrer is sustained ten days or such other time as may be fixed by the court shall be allowed to amend, and the demurring party shall have ten days after the service of the amended pleading in which to answer or demur, unless the court fix a different time.

Upon the condition of the case as it now stands and the rules for the government of proceedings and trials in this court, now the question arises as to whether or not the petition in this case is in time under the provisions of the Revised Statutes governing such cases, and it being a fact that the application for removal was made on the 14th day of December, after the cause in which the petition is filed, and the several causes which had been severed by the court had been continued on motion of the court, and after a continuance had been denied on application of plaintiff, I have concluded, and do so now hold and decide, that the petitioner comes too late, it be-

ing not only after this court had obtained jurisdiction of the several parties, but had commenced the exercise of such jurisdiction.

This conclusion I arrive at upon the authority of "Bible Society *vs.* Grove," 101 U. S., p. 610; Babbit *vs.* Clark, vol. 3, U. S. Supreme Court Reports, p. 106; Murray *vs.* Holden, U. S. Circuit Court, Western District of Missouri, McCrary, J.; Mendecker *vs.* Rosen-
44 baum, U. S. C't C., Southern District of N. Y., No. 8, vol. 1, p. 254, of the Reporter; Forest Home *vs.* Keller, bound vol. 9, page 432, of the Reporter, Blatchford, J.

THOMAS J. BOWERS,
Judge Superior 2 Court.

Hereupon motion was made on behalf of certain defendants who had demurred jointly to be allowed to answer separately and have separate trials awarded them.

The court denied the motion upon the ground that in the opinion of the court the filing of the petition for removal and the bond had divested this court of the jurisdiction of all defendants' cases other than the 294 whose cases were dismissed.

Whereupon the counsel for the defendants respectively whose cases were set for trial on the 13th day of December, 1881, and were by the court continued to Dec. 14th, 1881, and again on that day continued by the court until the 15th day of December announced themselves ready respectively to proceed to trial, and plaintiff and his counsel, P. G. Galpin and E. J. Linforth, being called at the door and no answer or appearance being made by either plaintiff or his said counsel, the counsel for the defendants whose cases were now pending for trial respectively demanded that their said cases be dismissed for want of prosecution, and thereupon severally and respectively moved the court to dismiss the
45 cases, which motion — granted in each case as the same was called and the order was entered in each accordingly.

Amendment No. V.

In the Superior Court in and for Sonoma County, State of California, January 3d, 1882, Department No. 2, Hon. Thos. J. Bowers, Judge, Presiding by Request of Hon. Jackson Temple, Judge of said Court.

CLINTON C. TRIPP *vs.* SANTA ROSA STREET R. R. *et al.* } The Plaintiff's Motion to Retax Cost Bill and Motion to Set Aside Orders of Dismissal.

This case coming regularly to be heard upon plaintiff's motion to retax cost bills filed herein, and also plaintiff's motion to vacate and set aside orders of dismissal as to certain defendants herein made and entered Dec. 15th, 1881, and no appearance of plaintiff in person or by counsel, *and* the said defendants, by their counsel respectively, as follows: Henley & Hardin, R. A. Frame, D. C. Allen, James H. McGee, J. T. Campbell, A. G. Shannon, George A. Johnson, A. B. Ware, Rutledge & McConnel, and John Brown, *and* moved the court to set these motions for hearing on the 12th day

of January, 1882, at 1 o'clock p. m., which motion was granted by the court and so ordered.

46 *Amendment No. VI.*

In the Superior Court in and for the County of Sonoma, State of California, January 12, 1882, Department No. 2.

Court met at 1 o'clock p. m., Hon. Thos. J. Bowers, judge, presiding at the request of the Hon. John G. Pressley, judge of said court.

CLINTON C. TRIPP *vs.* SANTA ROSA STREET R. R. Co. *et al.* } Motion to Set Aside and Vacate Orders of Dismissal Denied.

This cause coming on to be heard upon the plaintiff's motion filed herein and to set aside and vacate all the orders of dismissal made and entered on the 15th day of December, 1881, and E. J. Linforth, Esq., appearing as counsel for plaintiff, and Henley & Hardin, James H. McGee, J. T. Campbell, A. G. Shannon, Rutledge & McConnell, A. B. Ware, Geo. A. Johnson, R. A. Frame, D. C. Allen, and John Brown appearing for the defendants; whereupon, after argument of counsel for the respective parties upon the merits of said motion, plaintiff's counsel, E. J. Linforth, moved the court to set aside and vacate all the orders of dismissal made and entered on the 15th day of December, 1881, by this court and as to each and all of said orders of dismissal so made and entered, and read the affidavits of said plaintiff, C. C. Tripp, and E. J. Linforth in support of said
47 motion; whereupon defendants' counsel objected respectively to plaintiff's notice and motion filed herein; whereupon defendants' counsel objected to plaintiff's notice *notice* and motion filed herein upon the ground:

First. That plaintiff's notice and motion was insufficient and indefinite.

2nd. That said notice and motion was ambiguous and uncertain.

Court sustained objections and denied motion.

Amendment No. VII.

In the Superior Court in and for the County of Sonoma, State of California, February 13th, 1882, Department No. 2.

Court met at 12.30 o'clock p. m., Hon. Thos. J. Bowers, judge, presiding by the order of his excellency George C. Perkins, Governor of the State of California, to hear and determine.

CLINTON C. TRIPP *vs.* SANTA ROSA STREET R. R. *et al.* } Notice to Set Aside Orders of Dismissals Heretofore Made, etc.

This cause coming on to be heard upon the plaintiff's motion to set aside dismissals made herein on the 15th day of December, 1881, and also plaintiff's motion to set aside and vacate the order heretofore made on the 15th day of December, 1881, denying plaintiff's

motion for removal of this cause to the United States circuit
48 court for the district of California, E. J. Linforth, Esq., appearing as counsel for the plaintiff, and Henley & Hardin, Rutledge & McConnell, James H. McGee, J. T. Campbell, A. G. Shannon, Geo. A. Johnson, R. A. Frame, Darwin C. Allen, John Brown, and Murray Whallon for the defendants—

Whereupon plaintiff's counsel, E. J. Linforth, Esq., moved the court for an order setting aside and vacating the orders herein made and entered on the 15th day of December, 1881, denying said plaintiff's petition for removal of said cause from this superior court of Sonoma county to the said circuit court of the United States, and also the orders made and entered in the cases of several defendants herein dismissing the plaintiff's action as to certain defendants named respectively in said orders, upon the ground that the court had no jurisdiction of said action to make the said orders heretofore recited, and on the further ground of surprise and excusable neglect, when the defendants' counsel objected to the granting of plaintiff's motion upon the following grounds, among others, viz:

1st. That the matters in said motion contained are *res adjudicata*.

2nd. That the same motion had been previously made in this court, and had been made in this court and overruled and no leave had been granted to renew the same; that the notice is not directed to any defendant, nor can it be ascertained what order is asked to be set aside, as in fact there were two hundred and ninety-four separate orders made in the causes of as many distinct and
49 severed defendants on the day named in said notice of motion, and because there were by order of the court two hundred and ninety-four defendants in said action conducting separate trials therein; that it cannot be ascertained from the notice of motion what the plaintiff relies on in his proof as to what proves excusable neglect in his motion to have vacated the decision of the court in refusing to grant the plaintiff's former application to change the place of trial or to transfer the cause of action to the circuit court of the United States, — of California, and what proof is directed to that part of said motion asking to set aside the orders of dismissals; because an application for the continuance of the cases of the several defendants who had separate trials awarded them was made and submitted to the court by plaintiff before he made his application for removal of said cases, and because the said two hundred and ninety-four cases of as many of said defendants had been once continued by the court upon it own motion prior to the day of filing plaintiff's petition and bond for removal to the Federal courts; because the court never made an order dismissing the action entitled as in the plaintiff's notice of this motion, and because the court properly refused to cause the actions against the said two hundred and ninety-four defendants to be removed, and because the
50 court properly dismissed the causes on trial separately as to said two hundred and ninety-four defendants, and because the plaintiff make- no affidavits of merits, and because the plaintiff has voluntarily submitted himself to the jurisdiction of this court in the cause entitled as in his motion now pending, this court not hav-

ing denied his petition for removal as to said cause. Whereupon, after argument of counsel upon the merits of plaintiff's motion and defendants' objections herein, the court took the matter under advisement until 2 o'clock p. m.

And now, at 2 o'clock of this 13th day of February, 1882, the court convened for the purpose of rendering its decision on the above motion, defendants appearing by their respective counsel herein, and plaintiff failing to appear, either in person or by
51 counsel; and the court having fully considered the matters herein, it is now here ordered, adjudged, and decreed by the court that the motions of plaintiff is denied and the objections of defendants are sustained.

Plaintiff is allowed an exception to the ruling of the court.

That the foregoing amendments were duly and regularly served within the time mentioned by the statute and extensions granted.

Additional Amendments.

In the Superior Court, Sonoma County, State of California.

CLINTON C. TRIPP, Plaintiff,
vs.
SANTA ROSA STREET R. R. *et al.*, Defendants.

Be it remembered that proceedings were had in said cause and papers filed therein as hereinafter stated, as appears from the records and minutes of said court.

In the Superior Court in and for the County of Sonoma, State of California.

C. C. TRIPP
vs.
SANTA ROSA STREET RAILROAD COMPANY *et al.*

In this cause the separate answers of W. A. Finley, Pacific
52 M. E. College, Santa Rosa Savings Bank, and Jno. S. Taylor were filed Nov. 30th, 1881; separate answers of Mary McBean, Dec. 1st, 1881; separate answers of Mary E. Bond and Mrs. E. Kidd filed Dec. 2d, 1881; separate answers of W. E. Cocke, M. W. Connolly, Thos. and Mary Duffy, B. F. Ford, F. V. Harman, S. Hutchinson, W. H. Morris, L. D. Parks, and Santa Rosa Manufacturing Co. filed Dec. 5, 1881; separate answers of F. A. Pauli, executor, filed Dec. 6, 1881; the separate answers of defendants Henry Boken, First Baptist Church of Santa Rosa, A. J. Caldwell, A. Fine, Wm. Finlaw, D. R. Frazer, W. P. Ink, A. Koch, P. Leddy, Jacob McReynolds, W. W. Porter, Robert Ross, R. P. Smith, T. L. Thompson, and John A. Brown were filed Dec. 13, 1881; separate answers of P. Killeher and F. B. Glynn were filed Dec. 14, 1881.

Separate demurrers of each and every of the above-named defendants were filed on or before the 16th September, 1881.

On December 13, 1881, the court allowed each of above-named defendants to file their separate answer and to sever the trials of each case.

On December 13, 1881, each of said cases in which answers were filed subsequently to Nov. 25, 1881, was set down for trial Dec. 14, 1881, at one o'clock p. m., and counsel for plaintiff notified thereof by telegram, ordered by the court.

On Dec. 14, 1881, E. J. Linforth, counsel for plaintiff, appeared, and Henley & Hardin, James H. McGee, J. T. Campbell, A. G. Shannon, George A. Johnson, Rutledge & McConnell, A. B. Ware,
53 R. A. Frame, Darwin C. Allen, John Brown, Whipple and Oates, W. W. Porter, and Murray Whallon appearing for defendants.

Counsel for plaintiff moved the court to continue the causes, which motion was by the court denied. Whereupon plaintiff's counsel, E. J. Linforth, then filed plaintiff's petition and accompanying bond, praying for removal of this cause to the circuit court of the United States. Motion continued until Dec. 15, 1881.

Dec. 15, 1881.—The court made no order on the motion of removal of the causes to the circuit court of the United States as to defendants whose answers were filed subsequent to 25th Nov., 1881, and the ruling of the court was excepted to by said defendants.

James H. McGee, J. T. Campbell, A. G. Shannon, Rutledge and McConnell, Whipple and Oates, W. W. Porter, and Murray Whallon appearing as counsel for said last-named defendants, each separately for each defendant whose answer was filed subsequent to the 25th Nov., 1881, and, no counsel appearing for plaintiff, said counsel for defendants announced themselves ready for trial, and moved the court to dismiss said action for want of prosecution as to each of said defendants whose answers were filed subsequent to Nov. 25th, 1881, which motions were each severally and separately made by said defendants and denied by the court for the reason that plaintiff had filed a petition for removal of said cases to circuit court of United States and a bond therefor.

On 13th day of Feb'y, 1882, said cases last described were
54 set for trial Feb'y 28, 1882, it appearing to the court that plaintiff had not removed said cause or any part thereof to the circuit court of the United States, and that a term of said circuit court had intervened since which said cases could have been returned to said court.

On Feb. 28, 1882, said cases were called for trial, and no counsel appearing for plaintiff, and defendants whose answers were filed since 25th Nov., 1881, appearing, each and every one of them, by their respective counsel, moved the court to dismiss said cause as to each and every one of said defendants for want of prosecution, and for the reason that said plaintiff had not removed said cause to the circuit court of the United States; and it appearing that said plaintiff had not removed said cause to the term of said circuit court following the 15th Dec., 1881, and it further appearing that said plaintiff does not appear to prosecute said cause, said motion to dismiss was granted by the court.

And at the same time it appearing that no counsel appears for plaintiff, counsel for the following-named persons, whose answers were filed subsequent to 15th Dec., 1881, appeared and moved the court to dismiss said action for the want of prosecution and removal as aforesaid to circuit court of the United States as to said defendants and each of them, which motion was granted by the court. The said last-named defendants are as follows: E. T. Farmer, Wm. Patterson, J. F. Boyce, Thos. Creighton, Wm. E. McConnell,
55 Jeremiah Ridgway, J. W. Ridgway, J. B. Young, Richard Fulkerson, Santa Rosa Bank, Ella McCann, J. P. Gillooly, G. Kary Rendahl, Christian Hansen, and Mary Welch. Filed January 12th, 1882.

J. H. White, Wm. Fahey, and John Woods, W. J. Temple. Filed 21st Dec., 1881.

There are demurrers on file for fifty defendants.

There are four hundred defendants mentioned in complaint not served.

That the foregoing amendments were duly and regularly served within the time mentioned by the statute and extensions granted.

The foregoing bill of exceptions is this day allowed and approved by me as and being an exact copy of the original bill and amendments presented and allowed.

San Rafael, March 12th, 1882.

THOS. J. BOWERS, *Judge.*

Endorsed: Bill of exceptions. Filed April 14th, 1882. R. A. Thompson, clerk, by G. A. Thornton, deputy clerk.

Order Denying Motion.

In the Superior Court in and for the County of Sonoma, State of California, February 13th, 1882, Department No. 2.

Court met at 12.30 o'clock p. m.—Hon. Thos. J. Bowers, judge, presiding by the order of his excellency, George C. Perkins, Governor of the State of California—to hear and determine the cause of Clinton C. Tripp *vs.* Santa Rosa Street Railroad Company *et al.*

56 CLINTON C. TRIPP *vs.* SANTA ROSA STREET R. R. *et al.* } Motion to Set Aside Orders of Dismissals Heretofore Made, etc.

This cause coming on to be heard upon the plaintiff's motion to set aside dismissals made herein on the 15th day of December, 1881, and also plaintiff's motion to set aside and vacate the order heretofore made, on the 15th day of December, 1881, denying plaintiff's motion for removal of this cause to the United States circuit court for the district of California—E. J. Linforth, Esq., appearing as counsel for the plaintiff, and Henley & Hardin, Rutledge & McConnell, James H. McGee, J. T. Campbell, A. G. Shannon, Geo. A. Johnson, R. A. Frame, Darwin C. Allen, John Brown, and Murray Whallon for the defendants:

Whereupon plaintiff's counsel, E. J. Linforth, Esq., moved the court for an order setting aside and vacating the orders herein made and entered on the 15th day of December, 1881, denying said plaintiff's petition for removal of said cause from the superior court of Sonoma county to the circuit court of the United States, held at the city and county of San Francisco, State of California, and also the orders herein made and entered *in* on said last-mentioned day dismissing said action as to certain defendants named in said order, upon the ground that the court had no jurisdiction of said action to make the said orders heretofore recited, and
57 on the further ground of surprise and excusable neglect, when the defendants' counsel objected to the granting of plaintiff's motion upon the grounds—

1st. That the matters thereof were *res adjudicata*.

2nd. That the same motion had been previously made in this court and had been overruled, and no leave had been granted to renew the same; that the notice is not directed to any defendant nor to the attorney of any defendant, nor can it be ascertained what order is asked to be set aside, as, in fact, there were two hundred and ninety-four separate orders made in said action on the day named in said notice of motion, and because there were by order of the court two hundred and ninety-four defendants in said action conducting separate trials therein; that it cannot be ascertained from the notice of motion what the plaintiff relies on in his proof as to what proves excusable neglect in his motion to reverse the decision of the court in refusing to grant *to* the plaintiff's former application to change the place of trial, or to transfer the cause of action to the circuit court of the United States for California, and what proof is directed to that part of said motion asking to set aside the orders of dismissals; because an application for the continuance of this cause was made and submitted to the court by plaintiff before he made his application and presented his petition and bond filed for a removal of this cause to the United States circuit
58 court; because the court never made an order dismissing the said action; because the court properly refused to cause the actions against the said two hundred and ninety-four defendants to be removed and properly dismissed the causes of action on trial separately as to said 294 defendants; and because the plaintiff makes no affidavit of merits; and because a motion to retax costs was made by plaintiff in several of said 294 separate causes, and submitted by plaintiff and said separate defendants, and the motion therein denied, as shown by the papers on file and proceedings had; and because in the first notice of motion to set aside the said order of dismissal, which was denied by the court, no relief is asked or error assigned as to the refusal of the court to transfer said cause or any portion thereof to the U. S. circuit court; and the jurisdiction of the court is thereby acknowledged in retaining said causes, and all of these several grounds relied upon by the said 294 defendants, to whom separate trials were granted, will appear from the records and proceedings had in said cause, to which reference is hereby made. Whereupon, after argument of counsel upon the

merits of plaintiff's motion and defendants' objections herein, the court took the matter under advisement until 2 o'clock p. m. of this day.

And now, at 2 o'clock p. m. of this day, the court convened
59 for the purpose of rendering its decision herein, defendants appearing by their respective counsel herein, and plaintiff failing to appear, either in person or by counsel; and the court having fully considered the matters herein presented by counsel for plaintiff & defendant, it is now here ordered, adjudged, and decreed by the court that the defendants' objections to plaintiff's motion herein be sustained, and plaintiff's motion be denied, and plaintiff's counsel is allowed an exception to the ruling of the court. (Minute Book B, page 1, *et seq.*)

Notice of Appeal.

(Title Court and Cause.)

You will please take notice that the plaintiff in the above-entitled action hereby appeals to the supreme court of this State from the order of this court made on the 13th day of February, A. D. 1882, denying the motion of plaintiff to set aside the orders made in the cause on the 15th day of December, A. D. 1881, in the said superior court, in favor of the defendants in said action and against said plaintiff, and from the whole thereof.

PHILIP G. GALPIN, *Of Counsel.*
CLINTON C. TRIPP, *In pro. pro.*

To the clerk of said superior court, Messrs. Whipple and Oates, Frame & Allen, Rutledge & McConnell, W. W. Porter, Henley & Hardin, Shannon, Campbell & McGee, A. B. Ware, John
60 Brown, Geo. A. Johnson, Murray Whallon, and H. S. Willson, attorneys for certain defendants.

San Francisco, Cal., April 12th, 1882.

Endorsed: Filed April 13th, 1882. R. A. Thompson, clerk, by Geo. A. Thornton, deputy clerk.

(Title Court and Cause.)

Affidavit of Service of Notice of Appeal.

CITY AND COUNTY OF SAN FRANCISCO, } *ss.*
State of California, }

W. E. B. Bartholow, being duly sworn, deposes and says that he is over the age of eighteen years; that he served, for Clinton C. Tripp, plaintiff (and who appears herein *in pro. pro.*), and P. G. Galpin, of counsel, whose office and place of business is in the city and county of San Francisco, the notice of appeal in the above-entitled cause on the clerk of said superior court, Messrs. Whipple and Oates, Frame and Allen, Rutledge and McConnell, W. W. Porter, Henley and Hardin, Shannon, Campbell & McGee, A. B. Ware, John Brown, Geo. A. Johnson, Murray Whallon, and H. S. Willson, attorneys for

certain defendants in this cause herein mentioned, by depositing in the post office at San Francisco, Cal., a copy of said notice, postage paid, addressed to said attorneys at their respective places, to wit:

61 The clerk of said superior court (R. A. Thompson), Santa Rosa, Cal.; Messrs. Whipple and Oates, Santa Rosa, Cal.; Frame and Allen, Santa Rosa, Cal.; Rutledge and McConnell, Santa Rosa, Cal.; W. W. Porter, Santa Rosa, Cal.; Henley and Hardin, Santa Rosa, Cal.; Shannon, Campbell & McGee, Santa Rosa, Cal.; A. B. Ware, Santa Rosa, Cal.; John Brown, Santa Rosa, Cal.; Geo. A. Johnson, Santa Rosa, Cal.; Murray Whallon, Santa Rosa, Cal., and H. S. Willson, Santa Rosa, Cal., all of the county of Sonoma, on the 12th day of April, A. D. 1882.

W. E. B. BARTHOLOW.

Sworn and subscribed to before me this 24th day of May, A. D. 1882.

[SEAL.] WILLIAM HARNEY,
Notary Public.

Endorsed: Filed May 27th, 1882. R. A. Thompson, clerk.

(Title of Court and Cause.)

62 STATE OF CALIFORNIA, } ss.:
County of Sonoma, }

I, R. A. Thompson, county clerk and *ex officio* clerk of the superior court in and for said county, do hereby certify that I have compared the foregoing partly printed and partly written copies of the bill of exceptions, order denying motion, notice of appeal, and affidavit of service of notice of appeal with the original papers on file in my office and minutes of the court in the case of Clinton C. Tripp *vs.* Santa Rosa Street Railroad *et als.*, and that the same are correct. I further certify that an undertaking on appeal in due form was filed in this office on the 13th day of April, 1882, and that a written exception to the sufficiency of the said undertaking was filed on the 11th day of May, 1882.

In witness whereof I have hereunto set my hand and affixed the seal of said superior court this 12th day of June, A. D. 1882.

[SEAL.] R. A. THOMPSON, *Clerk*,
By GEO. A. THORNTON,
Deputy Clerk.

63 In the Supreme Court of the State of California.

CLINTON C. TRIPP, Appellant, }
vs.
SANTA ROSA STREET RAILROAD *et als.*, Respondents. }

W. E. B. Bartholow, being duly sworn, deposes and says that he is over the age of eighteen years; that he served for Clinton C. Tripp, plaintiff (and who appears herein *in pro. p'rs.*), and P. G. Galpin, of counsel, whose office and place of business is in the city and county of San Francisco, a copy of the transcript on appeal in the above-entitled cause; on Messrs. Whipple and Oates, Frame and Allen, Rut-

ledge and McConnell, W. W. Porter, Henley and Hardin, Shannon, Campbell & McGee, A. B. Ware, John Brown, Geo. A. Johnson, Murray Whallon, and H. S. Wilson, attorneys for certain defendants in this cause, herein mentioned, by depositing in the post office at San Francisco, Cala., a copy of said transcript, postage paid, addressed to said attorneys at their respective places, to wit, Messrs.
64 Whipple and Oates, Santa Rosa, Cala.; Frame & Allen, Santa Rosa, Cala.; Rutledge and McConnell, Santa Rosa, Cala.; W. W. Porter, Santa Rosa, Cala.; Henley and Hardin, Santa Rosa, Cala.; Shannon, Campbell & McGee, Santa Rosa, Cala.; A. B. Ware, Santa Rosa, Cala.; John Brown, Santa Rosa, Cala.; Geo. A. Johnson, Santa Rosa, Cala.; Murray Whallon, Sonoma, and H. S. Wilson, Santa Rosa, Cala., all of the county of Sonoma, on the 13th day of June, A. D. 1882.

W. E. B. BARTHOLOW.

Sworn and subscribed to before me this 13th day of June, A. D. 1882.

GEO. T. KNOX,
[SEAL.] *Notary Public.*

65 *Submission of Motion to Dismiss and Cause.*

Department Two. In the Supreme Court of the State of California.

TRIPP
v.
SANTA ROSA STREET R. R. *et al.* } 8498.

1885, Sept. 29.—Ordered that cause stand submitted.

(Title Court and Cause.)

1885, Dec. 31.—Submission vacated.—The court.

(Title Court and Cause.)

1885, Dec. 31.—Ordered heard in bank.—By the chief justice.

(Title Court and Cause.)

1886, Feb'y 17.—Motion to dismiss appeal argued and submitted.

(Title Court and Cause.)

1886, Feb'y 17.—Cause argued and submitted.

(Title Court and Cause.)

1886, June 9.—Filed petition for rehearing.

66 (Title Court and Cause.)

1886, June 25.—Rehearing denied.—The court.

67 In the Supreme Court of the State of California. In Bank.

CLINTON C. TRIPP, Appellant, *vs.* SANTA ROSA STREET RAILROAD *et al.*, Resp.	No. 8498. On Appeal from The Superior Court in and for the County of Sonoma.

And now, at this day, this cause being called and having been heretofore submitted and taken under advisement and all and singular the law and premises having been fully considered, the opinion of the court herein is delivered by Thornton, J.

We concur:

MYRICK, *J.*
ROSS, *J.*
MORRISON, *C. J.*
McKEE, *J.*
SHARPSTEIN, *J.*
McKINSTRY, *J.*

Whereupon it is adjudged and decreed by the court that the appeals from the superior court in and for the county of Sonoma in the above-entitled cause be, and the same are hereby, dismissed.

68 *Opinion.*

In the Supreme Court of the State of California. In Bank.

(Filed May 26, 1886.)

TRIPP *vs.* SANTA ROSA STREET RAILROAD CO. *et al.* } No. 8498.

This is an appeal from an order of the 13th of February, 1882, made after final judgment in the above-entitled action. The order appealed from is a denial of a motion made by the plaintiff to set aside certain orders made in the cause on the 15th day of December, 1881.

Of the orders of December 15, 1881, referred to, one denied plaintiff's motion to transfer the cause for trial to the circuit court of the United States, held at San Francisco, and the other dismissed the action, which was ejectment, as to certain defendants named in the order.

As to the order of dismissal, when entered it was a final judgment in the cause which was itself appealable. The appeal should have been prosecuted from such judgment. This court, as it is well settled, will not take jurisdiction of an order refusing to set aside a judgment or order itself appealable. (Henley *vs.* Hastings, 3 Cal., 342; Holmes *vs.* McCleary, 63 *id.*, 97; Cal. Southern R. Co. *vs.* S. P. R. Co., 65 *id.*, 295.) The appeal should be prosecuted from the judgment or order which the court has refused to set aside.

On an appeal from the final judgment the order of refusal to transfer to the U. S. circuit court might have been reviewed as an intermediate order, under section 956, C. C. P., the facts being made

to appear in the mode required by law to put them on the record. But as there is here no appeal from the final judgment, we do not see how we can review the order refusing the transfer. The course of procedure above indicated is the proper one and it should not be disregarded, as we should do if we were to allow a party to neglect to prepare the matter complained of for review on appeal from the judgment and resorting to a method unknown to the law by a motion to set aside the order complained of and then taking an appeal from the order denying such motion.

The proper steps should have been taken to review the order made in December on appeal from the judgment. The order of December, 1881, cannot be reviewed on appeal from an order made in February, 1882, refusing to set it aside.

The above disposes of the case, as it results in a dismissal of the appeals. The other points discussed on the argument and in the briefs of the counsel become, therefore, mere moot questions, which this court is not called on and declines to decide.

The like conclusion must follow, if the order of dismissal had not been entered as a judgment; for in that case the order appealed from would not be an order made after final judgment.

The appeal must be dismissed and it is so ordered.

THORNTON, *J.*

We concur:

MYRICK, *J.*
ROSS, *J.*
MORRISON, *C. J.*
McKEE, *J.*
SHARPSTEIN, *J.*
McKINSTRY, *J.*

69 *Bond.*

In the Supreme Court of the United States.

CLINTON C. TRIPP, Plaintiff in Error,
vs.
SANTA ROSA STREET RAILROAD COMPANY, J. P. CLARK, ADAM Shane, T. B. Hood, Rhoda Cooper, G. N. Savage, J. M. Roney, S. R. Cooper, A. Barnes, E. Johnson, Henry Klute, John M. White, W. E. Mead, Wm. Cooper, H. E. Richardson, L. B. Hall, Susan M. Saery, H. Campbell, Jacob Hardesty, T. T. Heald, Mrs. C. T. Johnson, Lewis F. Chinn, Joseph Kirsk, W. Y. Wilson, John Underhill, C. B. Case, Jacob Wheeler, R. B. Runyon, C. S. Pope, R. A. Thompson, A. G. Shannon, J. H. McGee, M. Byrne, W. R. Mead, J. Heltiner, John Boylan, P. H. Noonan, The City of Santa Rosa, Agricultural Park Association, W. Metzger, W. Kopf, Joseph S. Alemany, J. A. Goforth, S. Carter, J. H. Campbell, D. S. Saery, Mary Runyon, G. P. Noonan, J. R. Hailman, C. L. Phelps, Patrick Gleason, Lucretia Williams, Sonoma County, A. Latapie, C. H. Burger, James McReynolds, Walter Phillips, A. B. Ware, T. N. Blair, C. De Lange,

Christian Church, Sarah M. Burnett, Otis Gale, John
70 Haas, Susan Collier, A. C. McMeans, John C. Pressley,
Nora Langdon, M. Rutledge, David Clark, Mary T. Murphy, Jane Hewett, C. C. Farmer, George Darden, D. H. Kearney, P. J. Sullivan, Jackson Temple, T. S. Fulkerson, Leonida Gautier, Mary C. Powers, Elizabeth A. Gibbs, David Powers, Louis Feusier, Benjamin Forsyth, as Administrator of the Estate of H. C. Mizer; Sarah P. Lynch, T. J. Crane, H. Heidorn, R. S. Vail, James Leonard Clark, George A. Johnson, Mary T. Redmond, W. H. Forsythe, Fanny Muther, Mariah Richardson, C. H. Bumpus, James Warner, George Lehman, James C. Mailer, S. H. Bradlee, Richard Hodgson, E. A. Seigelken, as Surviving Partner of A. D. Seigelken & Bro.; Isaac Parsons, C. F. Copeland, Masonic Hall Association, A. S. Wright, Francis Korbel, Antone Korbel and Joseph H. Korbel, Firm of Korbel Bros.; Antone Korbel, Guy E. Grosse, H. B. Martin, Christian Judd, W. S. M. Wright, Chas. D. Frazee, C. F. Juilliard, A. H. Loucks, P. H. Rickliff, Joseph Childers, Wiley Coughran, Joseph H. Griggs, Charles S. Smith, James A. Hardin, Santa Rosa Gaslight Company, James Quinn, Mrs. Elizabeth Ross, E. C. Ferguson, A. W. Riley, Administrator of
71 the Estate of A. Thomas, deceased; D. S. White, A. W. Riley, Mrs. V. Ingram, H. D. Taft, Joseph Wright, Charles G. Ames, Thomas Hopper, Fred. Fick, Mrs. M. T. Smith, J. M. Kirkpatrick, Mary T. Johnson, John Taylor, Mrs. M. J. Atkins, Barclay Henley, E. Neblett, J. F. Kinslow, H. R. Keser, M. E. Slater, Jesse Booth, P. K. Dibble, Thomas M. Peugh, Elsie McAnally, B. Hoen, James Fulton, N. B. Harvey, Elizabeth Peterson, W. C. Reed, George Pflying, Matilda Pflying, George Wood, L. B. Gardner, B. S. Young, J. F. Campbell, Mary C. Spencer, Robert W. Bell, Caroline E. Morrow, O. H. Hoag, Rufus Murphy, Alonzo Heilbs, P. E. Kraft, S. A. Taft, R. B. Cannon, Margaret Parks, W. H. Nash, Fannie Barnes, W. B. Stanley, D. McLean, S. Wright, Thomas Nottingham, E. N. Seigrist, H. J. Fisher, B. F. Crystal, John McMinn, Lucy Ames, Daniel Branthaver, J. H. Lillie, William J. Bryant, Mary L. Van Doren, S. S. Kelley, Wyman Murphy, A. C. Rainey, John Iten, Santa Rosa Water Company, S. Weller, Mrs. R. R. Hayes, A. H. Ingham, Cornelia W. Woodward, Rebecca Branthaver, Mary E. Tasker, Mary O. Donavan, Mrs. Olive, R. Burbank, Santa Rosa Street Railroad, Reed Dutton, F. Boettcher, D. Haywood, Mrs. S. E. Phelps, W. R. Davidson,
72 Mrs. A. S. Case, J. A. Ballou, James Adams, J. D. Cooper, Mrs. Mary Ann Smith, George Bew, Otis Allen, Josias Davis, F. M. Dimic, Mrs. Gracie Lawrence, J. J. Badger, Austin Carlton, J. M. Williams, T. J. Ludwig, Zelia Thompson, Robert McGeorge, George W. Arnold, Sarah C. Davis, C. H. Thompson, S. S. Cooper, W. A. Eliason, G. H. Williams, E. H. Light, Daniel Burris, Stephen Peery, William Hill, J. B. Davis, Ewen Johnson, E. T. Crane, Jarah McDonall, E. P. Morgan, A. Weatherington, R. Weatherington, S. T. Coulter, Wesley Mook, Mary Smith, E.

T. Mills, E. A. Rodgers, William Baker, R. T. Mitchell, S. A. Murdock, H. W. Byington, T. J. Proctor, T. D. Clauton, S. A. Rendall, Henry Roney, M. L. McDonald, J. B. Armstong, M. J. Woodward, O. T. Woodward, Wm. J. Leek, E. H. Smythe, W. A. S. Holt, Owen N. Rodney, Mrs. S. M. Benton, Isaac De Turk, David Chamberlain, Frank W. Young, Montrose F. Calderwood, A. L. Fisher, E. D. Carter, Paul Heisel, B. F. Kein, N. J. Stone, Walter V. Middleton, William W. Cooper, H. R. Skinner, James W. Gray, William Prindle, D. C. Bane, Caroline Morse, Jacob J. Lewis, Mrs. Mary F. Dunbaugh, William Morter, Mrs.
73 Mary F. Wharton, *et als.*, Defendants in Error.

Whereas Clinton C. Tripp, the plaintiff in error in the above cause, has prosecuted a writ of error to the Supreme Court of the United States to re-examine the final judgment of the supreme court of the State of California in said cause:

Now, therefore, in consideration of the premises, we, the undersigned, householders, of the city and county of San Francisco, in the State of California, do hereby, jointly and severally, undertake and promise that the said Clinton C. Tripp, plaintiff in error, shall prosecute his writ of error to effect, and if he fail to make his plea good shall answer all the damages and costs, not exceeding five hundred dollars, to which amount we acknowledge ourselves jointly and severally bound.

Dated February 20th, 1888.

F. S. SPRING. [SEAL.]
L. A. BOOTH. [SEAL.]

74 STATE OF CALIFORNIA, } ss.
City and County of San Francisco, }

F. S. Spring — L. A. Booth, the persons named in and who subscribed in the foregoing undertaking as the sureties thereto, being severally duly sworn, each for himself says that he is worth the amount specified in said undertaking over and above his just debts and liabilities, exclusive of property exempt from execution, and that he is a resident and householder within the State of California.

F. S. SPRING. [SEAL.]
L. A. BOOTH. [SEAL.]

Sworn and subscribed to before me this 20th day of February, 1888.

[SEAL.] OTIS V. SAWYER,
Notary Public, City and County of San Francisco, State of California.

75 Endorsed: 8498. In the Supreme Court of the United States. Clinton C. Tripp, pl'ff in error, *vs.* Santa Rosa Street Railroad Co. and others, def'ts in error. Bond. Approved Feb. 24, 1888. Niles Searls, chief justice supreme court.

Endorsed: Filed Feb'y 24, 1888. J. D. Spencer, clerk, by Ben. M. Maddox, deputy.

76 *Citation.*

UNITED STATES OF AMERICA, *ss*:

To Santa Rosa Street Railroad Company, J. P. Clark, Adam Shaine, T. B. Hood, Rhoda Cooper, G. N. Savage, J. M. Roney, S. R. Cooper, A. Barnes, E. Johnson, Henry Klute, John M. White, W. E. Mead, Wm. Cooper, H. E. Richardson, L. B. Hall, Susan M. Sacry, H. Campbell, Jacob Hardesty, T. T. Heald, Mrs. C. T. Johnson, Lewis F. Chinn, Joseph Kirsk, W. Y. Wilson, John Underhill, C. B. Case, Jacob Wheeler, R. B. Runyon, C. S. Pope, R. A. Thompson, A. G. Shannon, J. H. McGee, M. Byrne, W. R. Mead, J. Heltmer, John Boylan, P. H. Noonan, The City of Santa Rosa, Agricultural Park Association, W. Metzger, W. Kopf, Joseph S. Alemany, J. A. Goforth, S. Carter, J. H. Campbell, D. S. Sacry, Mary Runyon, G. P. Nooman, J. R. Hailman, C. L. Phelps, Patrick Gleason, Lucretia Williams, Sonoma County, A. Latapie, C. H. Burger, James McReynolds, Walter Phillips, A. B. Ware, T. N. Blair, C. Delange, Christian Church, Sarah M. Burnett, Otis Gale, John Haas, Susan Collier, A. C. McMeans, John G. Pressley, Nora Langdon, M. Rutledge, David Clark, Mary T. Murphy, Jane Hewett, C. C. Farmer, George Darden, D. H. Kearney, P. J. Sullivan, Jackson Temple,
77 T. S. Fulkerson, Leonidas Gautier, Mary C. Powers, Elizabeth A. Gibbs, David Powers, Louis Feusier; Benjamin Forsyth, as administrator of the estate of H. C. Mizer; Sarah P. Lynch, T. J. Crane, H. Heidorn, R. S. Vail, James Leonard Clark, George A. Johnson, Mary T. Redmond, W. H. Forsythe, Fanny Muther, Mariah Richardson, C. H. Bumpus, James Warner, George Lehman, James C. Mailer, S. H. Bradlee, Richard Hodgson; E. A. Seigelken, as surviving partner of A. D. Seigelken & Bros.; Isaac Parsons, C. F. Copeland, Masonic Hall Association, A. S. Wright; Francis Korbel, Antone Korbel, and Joseph H. Korbel, firm of Korbel Bros.; Antone Korbel, Guy E. Grosse, H. B. Martin, Christian Judd, W. S. M. Wright, Chas. D. Frazee, C. F. Juilliard, A. H. Loucks, P. H. Rickliff, Joseph Childers, Wiley Coughran, Joseph H. Griggs, Charles S. Smith, James A. Hardin, Santa Rosa Gas-Light Company, James Quinn, Mrs. Elizabeth Ross, E. C. Ferguson; A. W. Riley, administrator of the estate of A. Thomas, deceased; D. S. White, A. W. Riley, Mrs. V. Ingram, H. D.
78 Taft, Joseph Wright; Charles G. Ames, Thomas Hopper, Fred. Fick, Mrs. H. T. Smith, J. M. Kirkpatrick, Mary T. Johnson, John Taylor, Mrs. M. J. Atkins, Barclay Henley, E. Neblett, J. F. Kinslow, H. R. Keser, M. E. Slater, Jesse Booth, P. K. Dibble, Thomas M. Peugh, Elsie McAnally, B. Hoen, James Fulton, N. B. Harvey, Elizabeth Peterson, W. C. Reed, George Pflying, Matilda Pflying, George Wood, L. B. Gardner, B. S. Young, J. F. Campbell, Mary C. Spencer, Robert W. Bell, Caroline E. Morrow, O. H. Hoag, Rufus Murphy, Alonzo Heilhs, P. E. Kraft, S. A. Taft, R. B. Cannon, Margaret Parks, W. H. Nash, Fannie Barnes, W. B. Stanley, D. McLean, S. Wright, Thomas Nottingham, E. N. Seigrist, H. J. Fisher, B. F. Crystal, John McMinn, Lucy

Ames, Daniel Branthaver, J. H. Lillie, William J. Bryant, Mary L. Van Doren, S. S. Kelly, Wyman Murphy, A. C. Rainey, John Iten, Santa Rosa Water Company, S. Weller, Mrs. R. R. Hays, A. H. Ingham, Cornelia W. Woodward, Rebecca Branthaver, Mary E. Tasker, Mary O. Donovan, Mrs. Olive R. Burbank, Santa Rosa Street Railroad, Reed Dutton, F. Boettcher, D. Haywood,
79 Mrs. S. E. Phelps, W. R. Davidson, Mrs. A. S. Case, J. A. Ballou, James Adams, J. D. Cooper, Mrs. Mary Ann Smith, George Bew, Otis Allen, Josias Davis, F. M. Dimic, Mrs. Gracie Lawrence, J. J. Badger, Austin Carlton, J. M. Williams, T. J. Ludwig, Zelia Thompson, Robert McGeorge, George W. Arnold, Sarah C. Davis, C. H. Thompson, S. S. Cooper, W. A. Eliason, G. H. Williams, E. H. Light, Daniel Burris, Stephen Peery, William Hill, J. B. Davis, Ewen Johnson, E. T. Crane, Jarah McDonall, E. P. Morgan, A. Weatherington, R. Weatherington, S. T. Coulter, Wesley Mook, Mary Smith, E. T. Mills, E. A. Rodgers, William Baker, R. T. Mitchell, S. A. Murdock, H. W. Byington, T. J. Proctor, T. D. Clanton, S. A. Rendall, Henry Roney, M. L. McDonald, J. B. Armstrong, M. J. Woodward, O. T. Woodward, Wm. G. Leek, E. H. Smythe, W. A. S. Holt, Oren N. Roney, Mrs. S. M. Benton, Isaac De Turk, David Chamberlain, Frank W. Young, Montrose F. Calderwood, A. L. Fisher, E. D. Carter, Paul Heisel, B. F. Kein, N. J. Stone, Walter V. Middleton, William W. Cooper,
80 H. R. Skinner, James W. Gray, William Prindle, D. C. Bane, Caroline Morse, Jacob J. Lewis, Mrs. Mary F. Dunbaugh, William Morter, Mrs. Mary F. Wharton, *et als.*, defendants in error, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the eighth day of October, A. D. 1888, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California, in the cause wherein Clinton C. Tripp is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness Niles Searls, chief justice supreme court, State of California, February 24th, A. D. 1888, and of the Independence of the United States the one hundred and twelfth.

[Endorsed:] 8498. In the Supreme Court of the United States. Clinton C. Tripp, pl'tiff in error, *vs.* Santa Rosa Street Railroad Co. and others, def'ts in error. Citation. Endorsed: Filed Feb'y 24, 1888. J. D. Spencer, clerk, by Ben. M. Maddox, deputy.

81 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the justices of the supreme court of the State of California, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said supreme court before

you, between Clinton C. Tripp, plaintiff in error, and Santa Rosa Street Railroad Co., J. P. Clark, Adam Shane, T. B. Hood, Rhoda Cooper, G. N. Savage, J. M. Roney, S. R. Cooper, A. Barnes, E. Johnson, Henry Klute, John M. White, W. E. Mead, Wm. Cooper, H. E. Richardson, L. B. Hall, Susan M. Saery, H. Campbell, Jacob Hardesty, T. T. Heald, Mrs. C. T. Johnson, Lewis F. Chinn, Joseph Kirsk, W. Y. Wilson, John Underhill, C. B. Case, Jacob Wheeler, R. B. Runyon, C. S. Pope, R. A. Thompson, A. G. Shannon, J. H. McGee, M. Byrne, W. R. Mead, J. Heltiner, John Boylan, P. H. Noonan, The City of Santa Rosa, Agricultural Park Association, W. Metzger, W. Kopf, Joseph S. Alemany, J. A. Goforth, S. Carter, J. H. Campbell, D. S. Saery, Mary Runyon, G. P. Noonan, J. R. Hailman, C. L. Phelps, Patrick Gleason, Lucretia Williams, Sonoma County, A. Latapie, C. H. Burger, James McReynolds, Walter Phillips, A. B. Ware, T. N. Blair, C. De Lange, Christian Church, Sarah M.
82 Burnett, Otis Gale, John Haas, Susan Collier, A. C. McMeans, John G. Pressley, Nora Langdon, M. Rutledge, David Clark, Mary T. Murphy, Jane Hewett, C. C. Farmer, George Darden, D. H. Kearney, P. J. Sullivan, Jackson Temple, T. S. Fulkerson, Leonidas Gautier, Mary C. Powers, Elizabeth A. Gibbs, David Powers, Louis Feusier, Benjamin Forsyth, as administrator of the estate of H. C. Mizer; Sarah P. Lynch, T. J. Crane, H. Heidorn, R. S. Vail, James Leonard Clark, George A. Johnson, Mary T. Redmond, W. H. Forsythe, Fanny Muther, Mariah Richardson, C. H. Bumpus, James Warner, George Lehman, James C. Mailer, S. H. Bradlee, Richard Hodgson, E. A. Seigelken, as surviving partner of A. D. Seigelken & Bros.; Isaac Parsons, C. F. Copeland, Masonic Hall Association, A. S. Wright; Francis Korbel, Antone Korbel, and Joseph H. Korbel, firm of Korbel Bros.; Antone Korbel, Guy E. Grosse, H. B. Martin, Christian Judd, W. S. M. Wright, Chas. D. Frazee, C. F. Juilliard, A. H. Loucks, P. H. Rickliff, Joseph Childers, Wiley Coughran, Joseph H. Griggs, Charles S. Smith, James A. Hardin, Santa Rosa Gas Light Company, James Quinn, Mrs. Elizabeth Ross, E. C. Ferguson, A. W. Riley, administrator of the estate of A. Thomas, deceased; D. S. White, A. W. Riley, Mrs. V. Ingram, H. D. Taft, Joseph Wright, Charles G. Ames, Thomas Hopper, Fred. Fick, Mrs. M. T. Smith, J. M. Kirkpatrick, Mary T. Johnson, John Taylor, Mrs. M. J. Atkins, Barclay Henley, E. Neblett, J. F. Kinslow, H. R. Keser, M. E. Slater, Jesse Booth, P. K. Dibble, Thomas M. Peugh, Elsie McAnally, B. Hoen, James Fulton, N. B. Harvey, Elizabeth Peterson, W. C. Reed, George Pflying, Matilda Pflying, George Wood, L. B. Gardner, B. S. Young, J. F. Campbell, Mary C. Spencer, Robert W. Bell, Caroline E. Morrow, O. H. Hoag, Rufus Murphy, Alonzo Heilhs, P. E. Kraft, S. A. Taft, R. B. Cannon,
83 Margaret Parks, W. H. Nash, Fannie Barnes, W. B. Stanley, D. McLean, S. Wright, Thomas Nottingham, E. N. Seigrist, H. J. Fisher, B. F. Crystal, John McMinn, Lucy Ames, Daniel Branthaver, J. H. Lillie, William J. Bryant, Mary L. Van Doren, S. S. Keily, Wyman Murphy, A. C. Rainey, John Iten, Santa Rosa Water Company, S. Weller, Mrs. R. R. Hays, A. H. Ingham, Cornelia W. Woodward, Rebecca Branthaver, Mary E. Tasker, Mary O.

Donavan, Mrs. Olive R. Burbank, Santa Rosa Street Railroad, Reed Dutton, F. Boettcher, D. Haywood, Mrs. S. E. Phelps, W. R. Davidson, Mrs. A. S. Case, J. A. Ballou, James Adams, J. D. Cooper, Mrs. Mary Ann Smith, George Bew, Otis Allen, Josias Davis, F. M. Dimmic, Mrs. Gracie Lawrence, J. J. Badger, Austin Carlton, J. M. Williams, T. J. Ludwig, Zelia Thompson, Robert McGeorge, George W. Arnold, Sarah C. Davis, C. H. Thompson, S. S. Cooper, W. A. Eliason, G. H. Williams, E. H. Light, Daniel Burris, Stephen Peery, William Hill, J. B. Davis, Ewen Johnson, E. T. Crane, Jarah McDonall, E. P. Morgan, A. Weatherington, R. Weatherington, S. T. Coulter, Wesley Mook, Mary Smith, E. T. Mills, E. A. Rodgers, William Baker, R. T. Mitchell, S. A. Murdock, H. W. Byington, T. J. Proctor, T. D. Clauton, S. A. Rendall, Henry Roney, M. L. McDonald, J. B. Armstrong, M. J. Woodward, O. T. Woodward, Wm. G. Leek, E. H. Smythe, W. A. S. Holt, Oren N. Roney, Mrs. S. M. Benton, Isaac De Turk, David Chamberlain, Frank W. Young, Montrose F. Calderwood, A. L. Fisher, E. D. Carter, Paul Heisel, B. F. Kein, N. J. Stone, Walter V. Middleton, William W. Cooper, H. R. Skinner, James W. Gray, William Prindle, D. C. Bane, Caroline Morse, Jacob J. Lewis, Mrs. Mary F. Dunbaugh, William Morter, Mrs. Mary F. Wharton, *et als*, defendants in error, a mani-

84 fest error hath happened, to the great damage of the said plaintiff in error, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, District of Columbia, on the second Monday of October next, in the said United States Supreme Court to be there and then held, that, the record and proceedings aforesaid be- inspected, the said United States Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this eighteenth day of February, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and twelfth.

Seal U. S. Circuit Court, Northern Dist. Cal.

L. S. B. SAWYER,
Clerk of the Circuit Court of the United States, Northern District of California.

The above writ of error is hereby allowed.

NILES SEARLS,
Chief Justice Supreme Court State of California.

85 [Endorsed:] No. 8498. United States Supreme Court. Clinton C. Tripp, pl'ff in error, *vs.* Santa Rosa Street Rail-

road Co. and others, def'ts in error. Original writ of error. Filed Feb'y 24, 1888. J. D. Spencer, clerk, by Ben. M. Maddox, deputy.

86 *Clerk's Certificate.*

In the Supreme Court of the State of California.

CLINTON C. TRIPP, Plaintiff in Error,
v.
SANTA ROSA STREET RAILROAD CO. *et al.*, Defendants in Error.

I, J. D. Spencer, clerk of the supreme court of the State of California, do hereby certify that the foregoing eighty-four pages, numbered from one to eighty-four, both numbers inclusive, contain a full, true, and correct transcript of the proceedings in the cause above entitled, and that the same together constitute the return to the annexed writ of error.

Seal Supreme Court of California.

Witness my hand and the seal of the said supreme court this 6th day of September, 1888.

J. D. SPENCER, *Clerk*,
By BEN. M. MADDOX, *Deputy*.

87 UNITED STATES OF AMERICA, *ss.*:

To Santa Rosa Street Railroad Company, J. P. Clark, Adam Shane, T. B. Hood, Rhoda Cooper, G. N. Savage, J. M. Roney, S. R. Cooper, A. Barnes, E. Johnson, Henry Klute, John M. White, W. E. Mead, Wm. Cooper, H. E. Richardson, L. B. Hall, Susan M. Sacry, H. Campbell, Jacob Hardesty, T. T. Heald, Mrs. C. T. Johnson, Lewis F. Chinn, Joseph Kirsk, W. Y. Wilson, John Underhill, C. B. Case, Jacob Wheeler, R. B. Runyon, C. S. Pope, R. A. Thompson, A. G. Shannon, J. H. McGee, M. Byrne, W. R. Mead, J. Heltiner, John Boylan, P. H. Noonan, The City of Santa Rosa, Agricultural Park Association, W. Metzger, W. Kopf, Joseph S. Alemany, J. A. Goforth, S. Carter, J. H. Campbell, D. S. Sacry, Mary Runyon, G. P. Noonan, J. R. Hailman, C. L. Phelps, Patrick Gleason, Lucretia Williams, Sonoma County, A. Latapie, C. H. Burger, James McReynolds, Walter Phillips, A. B. Ware, T. N. Blair, C. De Lange, Christian Church, Sarah M. Burnett, Otis Gale, John Haas, Susan Collier, A. C. McMeans, John G. Pressley, Nora Langdon, M. Rutledge, David Clark, Mary T. Murphy, Jane Hewett, C. C. Farmer, George Darden, D. H. Kearney, P. J. Sullivan, Jackson Temple, T. S. Fulkerson,

88 Leonidas Gautier, Mary C. Powers, Elizabeth A. Gibbs, David Powers, Louis Feusier, Benjamin Forsyth, as administrator of the estate of H. C. Mizer; Sarah P. Lynch, T. J. Crane, H. Heidorn, R. S. Vail, James Leonard Clark, George A. Johnson, Mary T. Redmond, W. H. Forsythe, Fanny Muther, Mariah Richardson, C. H. Bumpus, James Warner, George Lehman, James C. Mailer, S. H. Bradlee, Richard Hodgson, E. A. Seigelken, as surviving partner of A. D. Seigelken & Bros.; Isaac Parsons, C. F. Copeland, Masonic Hall Association, A. S. Wright; Francis Korbel, Antone Korbel, and Joseph H. Korbel, firm of

Korbel Bros.; Antone Korbel, Guy E. Grosse, H. B. Martin, Christian Judd, W. S. M. Wright, Chas. D. Frazee, C. F. Juilliard, A. H. Loucks, P. H. Rickliff, Joseph Childers, Wiley Coughran, Joseph H. Griggs, Charles S. Smith, James A. Hardin, Santa Rosa Gas-Light Company, James Quinn, Mrs. Elizabeth Ross, E. C. Ferguson, A. W. Riley, administrator of the estate of A. Thomas, deceased; D. S. White, A. W. Riley, Mrs. V. Ingram, H. D. Taft, Joseph Wright, Charles G. Ames, Thomas Hopper, Fred. Fick, Mrs. M. T. Smith, J. M. Kirkpatrick, Mary T. Johnson, John Taylor, Mrs. M. J. Atkins, Barclay Henley, E. Neblett, J. F. Kinslow, H. R. Keser, M. E. Slater, Jesse Booth, P. K. Dibble, Thomas M. Peugh, Elsie McAnally, B. Hoen, James Fulton, N. B. Harvey,
89 Elizabeth Peterson, W. C. Reed, George Pflying, Matilda Pflying, George Wood, L. B. Gardner, B. S. Young, J. F. Campbell, Mary C. Spencer, Robert W. Bell, Caroline E. Morrow, O. H. Hoag, Rufus Murphy, Alonzo Heilhs, P. E. Kraft, S. A. Taft, R. B. Cannon, Margaret Parks, W. N. Wash, Fannie Barnes, W. B. Stanley, D. McLean, S. Wright, Thomas Nottingham, E. N. Seigrist, H. J. Fisher, B. F. Crystal, John McMinn, Lucy Ames, Daniel Branthaver, J. H. Lillie, William J. Bryant, Mary L. Van Doren, S. S. Kelly, Wyman Murphy, A. C. Rainey, John Iten, Santa Rosa Water Company, S. Weller, Mrs. R. R. Hays, A. H. Ingham, Cornelia W. Woodward, Rebecca Branthaver, Mary E. Tasker, Mary O. Donavan, Mrs. Olive R. Burbank, Santa Rosa Street Railroad, Reed Dutton, F. Boettcher, D. Haywood, Mrs. S. E. Phelps, W. R. Davidson, Mrs. A. S. Case, J. A. Ballou, James Adams, J. D. Cooper, Mrs. Mary Ann Smith, George Bew, Otis Allen, Josias Davis, F. M. Dimmic, Mrs. Gracie Lawrence, J. J. Badger, Austin Carlton, J. M. Williams, T. J. Ludwig, Zelia Thompson, Robert McGeorge, George W. Arnold, Sarah C. Davis, C. H. Thompson, S. S. Cooper, W. A. Eliason, G. H. Williams, E. H. Light, Daniel Burris, Stephen Peery, William Hill, J. B. Davis, Ewen Johnson, E. T. Crane, Jarah McDonall, E. P. Morgan, A. Weatherington, R. Weatherington, S. T. Coulter, Wesley Mook, Mary Smith, E. T. Mills, E. A. Rodgers, William Baker, R. T. Mitchell, S. A. Murdock, H. W. Byington, T. J. Proctor, T. D. Clauton, S. A. Rendall, Henry Roney, M. L. McDonald,
90 J. B. Armstrong, M. J. Woodward, O. T. Woodward, Wm. G. Leek, E. H. Smythe, W. A. S. Holt, Oren N. Roney, Mrs. S. M. Benton, Isaac De Turk, David Chamberlain, Frank W. Young, Montrose F. Calderwood, A. L. Fisher, E. D. Carter, Paul Heisel, B. F. Kein, N. J. Stone, Walter V. Middleton, William W. Cooper, H. R. Skinner, James W. Gray, William Prindle, D. C. Bane, Caroline Morse, Jacob J. Lewis, Mrs. Mary F. Dunbaugh, William Morter, Mrs. Mary F. Wharton, *et als.*, defendants in error, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the eighth day of October, A. D. 1888, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California, in the cause wherein

Clinton C. Tripp is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Feb. 24th, 1888.

NILES SEARLS,
Chief Justice Supreme Court, State of Cala.

91 In the Supreme Court of the State of California.

CLINTON C. TRIPP, Plaintiff,)
vs.)
SANTA ROSA STREET RAILROAD *et als.*, Defendants.)

CITY AND COUNTY OF SAN FRANCISCO,)
State of California,) ss:

A. C. Hammond, being duly sworn, deposes and says that he is over the age of eighteen years; that he served for Clinton C. Tripp, plaintiff (and who appears herein *in pro. per.*), and P. G. Galpin, of counsel, whose offices and places of business *is* in the city and county of San Francisco, the notice of citation of the above cause to the Supreme Court of the United States by the plaintiff in error on Messers. Henley & Oates, Frame & Allen, Rutledge and McConnell, Shannon, Campbell & McGee, A. B. Ware, John Brown, Geo. A. Johnson, and Murray Whallon, attorneys for defendants in this cause herein mentioned, by depositing in the post office at San
92 Francisco, Cal., a copy of said citation, postage paid, addressed to said attorneys at their respective places, to wit: Henley & Oates, Santa Rosa, Cal.; Rutledge and McConnell, Santa Rosa, Cal.; Shannon, Campbell & McGee, Santa Rosa, Cal.; Frame and Allen, Santa Rosa, Cal.; A. B. Ware, Santa Rosa, Cal.; John Brown, Santa Rosa, Cal.; Geo. A. Johnson, Santa Rosa, Cal.; Murray Whallon, Santa Rosa, Cal., all of the county of Sonama, on the 29th day of September, A. D. 1888; that on the date of said service there was a regular communication by mail between San Francisco and Santa Rosa, Cal.

A. C. HAMMOND.

Sworn and subscribed to before me this 29th day of September, A. D. 1888.

[Seal George T. Knox, Notary Public, City & County of San Francisco.]

GEO. T. KNOX,
Notary Public.

93 [Endorsed:] 1258. In the Supreme Court of the United States. Clinton C. Tripp, pl'tiff in error, *vs.* Stanta Rosa Street Railroad Co. and others, def'ts in error. Citation.

Endorsed on cover: California sup. court. No. 197. Clinton C. Tripp, plaintiff in error, *vs.* The Santa Rosa Street Railroad Company *et al.* Filed October 9, 1888.

Office Supreme Court U. S.
FILED,
DEC 28 1891

No. 197.

IN THE SUPREME COURT of the UNITED STATES.

OCTOBER TERM, 1891.

CLINTON C. TRIPP,
Plaintiff in Error,

vs.

THE SANTA ROSA STREET RAILROAD CO., et al.
Defendants in Error.

Brief of Plantiff in Error.

PHILIP G. GALPIN,
Attorney for Plaintiff in Error.

Leader Printing Co., 532 Commercial St., S. F.

IN THE

Supreme Court of the United States.

CLINTON C. TRIPP,
Plaintiff in Error,

vs.

THE SANTA ROSA ST. RAILWAY, et al.
Defendants in Error.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF FACTS.

On the 14th day of December, 1881, plaintiff filed a petition and bond for the removal of this cause into the United States Circuit Court for the Northern District of California, the cause being at that time pending in the State Court. The petition and bond are found at folios 10 to 14 of record.

The Court denied the motion to remove, and thereafter proceeded to render various judgments conceived by plaintiff's counsel to be void for want of jurisdiction. Afterwards a motion was made to expunge these void judgments from the record of the Court, which was denied. Folios 46 to 48. An appeal was taken to the Supreme Court of the State, and it refused to take jurisdiction of the motion, for the reason that the order denying the motion according to the practice of the State Court was not an appealable order. The judgments therefor stand of record unvacated. The opinion of the Supreme Court may be found in folios 68 to 69 of the record. This writ of error is taken to reverse the judgment of the Supreme Court, affirming the order of the lower Court, refusing to vacate the judgments. Folios 41 to 45.

At the time this motion was made the cause was not at issue as to very many defendants, in favor of whom judgment was subsequently rendered, and in fact a large number of answers were filed after the 30th day of November, 1881, and down to and on the day the motion for removal was made, as appears from folios 52 to 54.

The question presented then is as to whether the judgments were void for want of jurisdiction, and if so whether they ought to be vacated of record.

ASSIGNMENTS OF ERROR.

1. The Supreme Court of the State erred in holding that a void judgment could not be vacated on motion, and without an appeal, from the judgment

2. Said Court erred in refusing to order said judgments to be vacated by the lower Court.

POINTS AND AUTHORITIES.

1. If the judgments were rendered without jurisdiction, they were void, but it is not on that account any less the duty of the Court to expunge such judgments from the record.

Murdock *vs.* DeVries, 37 Cal., 528.

Sanchez *vs.* Carriaga, 31 Cal. 170.

Bell *vs.* Thompson, 19 Cal., 707.

Logan *vs.* Hilligas, 16 Cal., 202.

Livermore *vs.* Campbell, 52 Cal., 76.

Sweeney *vs.* Stanford, 60 Cal., 362.

Wharton *vs.* Harlan 68 Cal. 422.

2. These judgments were void because prior to the trial and within the time specified in the act of Congress the plaintiff had filed a legal petition and bond for removal of the cause into the United States Circuit Court.

Hess *vs.* Reynolds, 113 U. S., 73.

Miller *vs.* Tobin, 9 Sawyer, 401.

Pulman Palace Car Co. *vs.* Speck, 113 U. S., 84.

Kings *vs.* Worthington, 104, U. S., 44

Myer *vs.* The Construction Co., 100 U. S., 457

Yulu *vs.* Vose, 99 U. S., 539.

Sharp *vs.* Guther, 74 Ind., 357.

Preston *vs.* The Travelers Insurance Co., 58 N. H., 76.

Meyer *vs.* Schinney, 55 Tex., 430.

State Ex rel Tillman *vs.* Coosan Mine Co., 45 Fed. Rp., 804.

PHILIP G. GALPIN,
Plaintiff's Attorney.

December 16, 1891.